

リーガルフロンティア21

プロジェクトベース

実務・英文契約書講座

第3回 秘密保持契約（NDA）

2013 年 5 月 29 日（水） 午後7:00～9:00

会 場

〒101-0051 東京都千代田区神田神保町 3-10 神田第3 アメレックスビル 7F
株式会社リーガルフロンティア21
セミナールーム

テーマ	トピック	学習目標
③秘密保持契約（NDA） 2013年5月29日（水）	秘密情報の定義のしかた、適用除外の規定、秘密保持義務の内容、秘密保持義務違反の場合のコモンロー・衡平法上の救済	秘密保持契約（NDA）は、文字どおり守秘義務を課す契約ですが、機能的には簡略化された試験的な業務提携契約として機能しています。また、秘密保持条項は、それ自体として、他の主要な契約書に組み込まれているという点で、注意して学ぶ必要があります。

秘密保持契約（NDA）

1. 秘密保持契約書（NDA）とは何か

1) NDA は秘密を開示するための契約書（開示と秘密保持のジレンマ）

- 秘密保持の要請は、相手方に秘密情報を開示することから起こる（「秘密保持契約書」は「秘密開示契約書」）
 - 絶対的なブラックボックス化戦略をとれば、秘密保持契約書の出番はなくなる：コカコーラの例（「コカコーラのレシピは、社長とゼネラルカウンセルの2名しかアクセスできない」）

2) 「秘密情報」の定義の仕方

- 相手方に提供する情報、相手方が知るかもしれない情報で、秘密を守ってもらいたい必要のあるあるもの
- 「秘密情報の指定」を求めるか、「秘密情報であることを合理的に知り得べかりし」場合のような「四囲の状況」条項を入れるか

3) 秘密保持義務とその適用除外

- 本来「秘密情報」に該当するものであっても、例外的に「秘密情報」とならないもの、ならない場合を定めるのが通例

4) NDA の当事者と秘密保持義務を負う者の範囲

- 契約当事者と秘密保持義務を負う当事者が一致するとは限らない（例：米国企業のように、事業部門毎に「分社化」している場合の取扱い）
- 従業員等への秘密保持義務の拡大していく（「繋がり」）
 - それらの者の秘密保持義務の程度をどのように設定するか

5) 秘密保持義務を課す限界（1）

- 秘密の開示を受ける相手方が上場（公開）企業の場合、証券取引法上の公開義務を負う

MUTUAL CONFIDENTIALITY/NON-DISCLOSURE AGREEMENT

AGREEMENT entered into this day of....., 2010 by and between **Integration Technology Ltd**, a UK company, and ******* Corporation**, a Japanese company.

WHEREAS, Integration Technology and ***** desire to enter into an Agreement under which the parties will continue to collaborate together

WHEREAS, such activities have in the past and will in the future require the disclosure by each party of certain technical, manufacturing and other data containing proprietary information belonging to it.

WHEREAS, each party is willing to disclose such data only on the condition that the data be protected.

NOW, therefore, in consideration of the mutual promises contained herein, the parties agree as follows:

1. All drawings and other technical, manufacturing and other proprietary data, all reproductions thereof, and all samples of products or constituents thereof, furnished by one party to the other or prepared or developed wholly or partially from the information submitted (hereinafter "Data") shall be and remain the sole property of the disclosing party. Such Data shall be returned to the disclosing party on request at the expiration, termination or cancellation of this Agreement.
2. During the Term of this Agreement and for a period of five (5) years after expiration of the Term, each party shall treat as confidential all Data made available directly or indirectly by the other hereunder, and will not disclose to any third party Data provided under this Agreement, except with the express prior written consent of the disclosing party. Any Data or other information deemed confidential which is discussed or disclosed orally during a meeting or otherwise shall be reduced to writing and marked as "CONFIDENTIAL" by the disclosing party and sent to the receiving party within thirty (30) days of oral disclosure.
3. During the Term of this Agreement and for a period of five (5) years after expiration of the Term, the receiving party will not analyse, have analysed, make direct copies or cause direct copies to be made, sell, show, give or otherwise disclose Data or the nature of the work being done by the receiving party for the disclosing party to any third party without the disclosing party's express prior written approval. If the receiving party wishes to transmit products made from such Data to a third party for any purpose, including physical property testing, performance evaluation and further processing, the disclosing party will not unreasonably withhold approval but may require that, prior to such transmittal, the receiving party enter into a confidentiality agreement with the third party in a form acceptable to the disclosing party that provides the same level of protection for the disclosing party's Data as this Agreement.
4. Nothing contained herein shall in any way restrict or impair either party's right to use, disclose or otherwise deal with any technical information, Data, physical objects or products which: (a) at the time of disclosure is generally available to the public or thereafter becomes generally available to the public by publication or otherwise through no act of such party; or (b) it can show was in its possession prior to the time of disclosure by the other party and was not

acquired directly or indirectly from the other party or any of its subsidiaries or affiliates; (c) is independently developed by or for the recipient as evidenced by written records; or (d) is independently made available to such party as a matter of right by a third party; or (e) is required to disclose by statute or other common law to a government body.

5. This Agreement shall commence on the date of signing and continue in force for 1 year or until terminated as determined in writing between the parties. Either party may terminate this agreement (with or without cause) by giving notice of termination to the other party in writing.
6. This agreement shall be governed by, and construed under English Law.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed each by a duly authorised representative as of the date first above written.

INTEGRATION TECHNOLOGY LTD.
115 Heyford Park
Upper Heyford
OX25 5HA
United Kingdom

By _____

Name _____

Title _____

Date _____

By _____

Name _____

Title _____

Date _____

STANDARD MUTUAL NON-DISCLOSURE AGREEMENT

AGREEMENT NO. **07SND A0003**

Conexant Systems, Inc.	
Signature:	Signature:
Printed Name:	Printed Name:
Title: ASM	Title: Chief Fellow
Principal Place of Business: Newport Beach, California 92660 Attn: Contracts Manager	Principal Place of Business:

This Standard Mutual Non-Disclosure Agreement ("Agreement") is entered into as of 10/05/2006 ("Effective Date") by **Conexant Systems, Inc.** ("Conexant") and [] ("Company"). This Agreement defines the terms and conditions pursuant to which the parties will disclose Confidential Information and have confidential discussions (as defined below) for the purpose of evaluating or furthering a business relationship ("Purpose").

The parties agree as follows:

1. **Confidential Information.** The receiving party ("Recipient") agrees that the information disclosed by the disclosing party ("Discloser") may constitute a trade secret of Discloser. This Agreement shall apply to all Confidential Information disclosed by the parties to each other, whether disclosed verbally, in writing, or by inspection of tangible objects. Confidential Information includes, but is not limited to, all product designs, capabilities, specifications, drawings, program code, mask work designs, models, documentation, components, software (in various stages of development), test and development boards, hardware reference code and platforms, architectures, agreement terms, financial and pricing information, business and marketing plans, actual and potential customers and suppliers, and other similar information that is proprietary to Discloser ("Confidential Information"). Discloser shall designate such Confidential Information as "Confidential," "Proprietary," or other similar designation denoting confidentiality (i) by stamp or legend if communicated in writing or other tangible form, or (ii) orally at the time of disclosure with a written confirmation within thirty (30) days describing the Confidential Information communicated orally. All restrictions as to use and disclosure shall apply during such thirty-day period.
2. **Protection of Confidential Information.** Each party agrees to hold the other party's Confidential Information in strict confidence and to use it only for the Purpose. Recipient agrees to limit the disclosure to those employees and contractors having a need-to-know only for the Purpose. Recipient shall have entered into confidentiality agreements with such employees and contractors having obligations of confidentiality as strict as those herein prior to disclosure to such employees and contractors and shall cause all such persons to adhere to said confidentiality obligations. Recipient shall protect the Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, disclosure, dissemination or publication of the Confidential Information as Recipient uses it to protect its own comparable confidential and proprietary information. Any reproduction of Confidential Information shall contain all confidential or proprietary legends that appear on the original. If Discloser discloses any software or hardware containing software in object or executable code format, Recipient is prohibited from disassembling, de-compiling, reverse-engineering or otherwise attempting to discover or disclose Discloser's prototypes, software, other tangible objects, or methods or concepts embodied in such software or hardware. Recipient shall not remove, overprint or deface any notice of copyright, trademark, logo, legend, or other notices of ownership from any originals or copies of Discloser's Confidential Information. Recipient will promptly upon discovery notify Discloser in writing in the event of any loss or unauthorized disclosure of Confidential Information.
3. **Exceptions.** The above restrictions on use and disclosure shall not apply to any information that:
 - (i) is or becomes known in the public domain or is in the possession of Recipient without restriction at the time of disclosure under this Agreement;
 - (ii) is used or disclosed with prior written approval of Discloser;
 - (iii) is independently developed by Recipient without breach of this Agreement, and as shown by documents and other competent evidence in Recipient's possession;
 - (iv) is lawfully disclosed to Recipient from a source other than Discloser without restriction on the disclosure; or
 - (v) is required to be disclosed pursuant to law or the order of any governmental authority, provided that, prior to disclosing any information pursuant to this clause, Recipient will give prior notice thereof to Discloser and provide Discloser with the opportunity to contest such disclosure.

Recipient may use in its business activities the ideas, concepts and know-how contained in Discloser's Confidential Information which are retained in the unaided memories of Recipient's employees and contractors who have had access to the Confidential Information. Recipient may not use confidential Information that is in written, electronic or other tangible form or information that has been intentionally memorized so as to reduce it to a non-tangible form for the purpose of creating a residual. Neither party shall have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals.

4. Term and Termination. The term of this Agreement shall be for a period of five (5) years from the Effective Date. This Agreement may be earlier terminated at any time upon thirty (30) days prior written notice to the other party. Upon termination or expiration of this Agreement, Recipient will make no further use of Discloser's Confidential Information. Upon receipt of the written request of Discloser, Recipient will return, or give written certification of the destruction of all Confidential Information and copies thereof in any tangible or digital form, which are in Recipient's possession or control. Notwithstanding that this Agreement shall have terminated or expired, the parties agree to keep in confidence and prevent the unauthorized use or disclosure of Confidential Information for a period of five (5) years following disclosure.

5. Warranties. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." EACH PARTY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS OR PERFORMANCE OF THE CONFIDENTIAL INFORMATION.

6. Independent Development. Each party understands that the other party may currently or in the future be developing information or technology internally, or receiving information or technology from third parties that may be similar to Discloser's Confidential Information. Accordingly, nothing in this Agreement will be construed as a representation, agreement or inference that either party will not develop products or technology, or have products developed for it, or enter into joint ventures, alliances, or licensing arrangements that, without violation of this Agreement, compete with the products or systems embodying Discloser's Confidential Information.

7. No Licenses; No Further Agreement. Nothing in this Agreement is intended to grant any rights to Recipient under any intellectual property, including, but not limited to, patents, mask work rights, trademarks or copyrights of Discloser or any third party, nor shall this Agreement grant Recipient any rights in or to Confidential Information except as expressly set forth herein. Title to Confidential Information remains with Discloser. Nothing in this Agreement shall be construed or implied to obligate either party to furnish any specific type of information to the other party, or to create any obligation for either party to enter into any specific transaction with the other party. The parties do not intend that any agency or partnership relationship be created between them by this Agreement.

8. General.

8.1 Export Control. Recipient shall comply with all applicable export and import laws and regulations.

8.2 Notices. All notices or correspondence pertaining to this Agreement shall be addressed and sent to the respective addresses as noted above.

8.3 Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of California, USA, without regard to its conflict of law provisions. Each Party irrevocably consents to jurisdiction of the state and federal courts of the State of California.

8.4 Assignment. Neither party may assign or delegate all or any part of its rights or obligations under this Agreement without the prior written consent of the other party, except to an entity that succeeds to all or substantially all of the business assets of such party, and so long as such entity agrees to be bound by all the rights, obligations and other terms and conditions of this Agreement. Any attempted assignment or delegation without such consent, except as expressly set forth herein, will be void.

8.5 Non-Waiver of Rights. The failure of either party to object to or take affirmative action with respect to any conduct of the other party that is in violation of the terms of this Agreement shall not be construed as a waiver thereof, or as waiver of any future breach or subsequent wrongful conduct.

8.6 Severability. If any term or provision of this Agreement is determined to be invalid or unenforceable for any reason, it shall be adjusted rather than voided, if possible, to achieve the intent of the parties to the extent possible. In any event, all other terms and provisions shall be deemed valid and enforceable to the maximum extent possible.

8.7 Injunctive Relief. The parties hereby acknowledge that the unauthorized disclosure, use or disposition of Confidential Information, or the disclosure of the nature or substance of the discussions between the parties as contemplated herein, could cause irreparable harm and significant injury which may be difficult to ascertain and not susceptible to monetary damages. Accordingly, the parties agree that money damages would not be a sufficient remedy for any breach of this Agreement by it or its employees or contractors, and that in addition to all other remedies, Discloser shall be entitled to seek injunctive relief as a remedy for any such breach. In the event of any legal action to enforce the provisions of this Agreement, the party seeking such enforcement, if it prevails, shall be entitled, in addition to any other relief granted, to recover from the other party the costs and expenses of such enforcement, including reasonable attorneys' fees.

8.8 Entire Agreement. Any amendment made to or modification of this Agreement must be made in writing and signed by both parties. This Agreement is the complete and final agreement of the parties with respect to the Confidential Information.

8.9 Counterparts. This Agreement may be executed in duplicate originals or in separate counterparts, which are effective as if the parties signed a single original. For the purposes of this Agreement, facsimile signatures shall be treated as original signatures.

1. CONFIDENTIALITY AGREEMENT / NON-DISCLOSURE AGREEMENT

between

[Customer]

[address]

- hereinafter „**Customer**” -

and

Röders GmbH
Scheibenstrasse 6
29614 Soltau
Germany

- hereinafter „**Röders**” -

2. Preamble

The Customer is a company active in the industry. In particular, the Customer develops and manufactures
.....

Röders manufacture PET stretch blowmoulds and High Speed Cutting (HSC) machines, and offers related services in this field of business.

The Customer considers purchasing of such products from Röders.

In the course of these activities it might become necessary for one party to disclose confidential information, including without limitation company and business secrets, to the other party. In order to protect such confidential information, the parties hereby agree as follows:

Article 1

- 1.1 "Confidential Information" shall mean all information that one party (hereinafter „**Disclosing Party**”) has disclosed or will disclose or otherwise makes available to the other party (hereinafter „**Receiving Party**”), or which the Receiving Party otherwise becomes aware of, in connection with the activities described in the preamble, including without limitation written and oral information, information stored on a data carrier, samples and models.
- 1.2 Confidential Information shall not include information for which the Receiving Party can prove that the information
- 1.2.1 was in the Receiving Party's possession prior to the disclosure;
 - 1.2.2 was or has become part of the public domain without any infringement of the Receiving Party's confidentiality obligation under this agreement;
 - 1.2.3 was disclosed by a third party, unless the Receiving Party is aware of the fact that the third party, when disclosing the information, was infringing a confidentiality obligation existing vis-à-vis the Disclosing Party; or
 - 1.2.4 was independently developed by the Receiving Party without using any Confidential Information of the Disclosing Party.

Article 2

- 2.1. The Receiving Party is obligated
- 2.1.1. to keep Confidential Information confidential, in particular not to disclose it to third parties;

- 2.1.2. to use Confidential Information for no purposes other than the activities set out in the preamble;
- 2.1.3. to take all measures necessary to prevent unauthorized access to Confidential Information;
- 2.1.4. to grant access to Confidential Information only to those of its employees who need to know it for the purposes described in the preamble and who are bound by a confidentiality obligation which survives their employment agreement.

Exempt from 2.1.1. is a disclosure of Confidential Information by the Receiving Party due to mandatory laws or a legally binding administrative decision or a legally binding court order.

- 2.2. The above provisions shall not affect section 17 UWG (Unfair Competition Act) and section 5 BDSG (Federal Data Protection Act).

Article 3

- 3.1. All documents, data carrier, samples etc. provided by the Disclosing Party to the Receiving Party under this agreement remain property of the Disclosing Party. Upon request and discretion of the Disclosing Party, the Receiving Party, without exception, has to return or destroy the aforementioned items including all copies thereof. The Receiving Party has neither a right of retention nor may claim a set-off. Upon request, the destruction has to be confirmed.
- 3.2. Any patent rights, copyrights and other intellectual property rights with respect to the disclosed Confidential Information remain with the Disclosing Party. By disclosing Confidential Information, the Disclosing Party does not grant any license to use such rights.

Article 4

- 4.1. This agreement will remain in force until terminated. It may be terminated by either of the parties with four weeks written notice.
- 4.2. The obligations under Article 2 shall survive the termination of this agreement to the extent that Confidential Information was disclosed or obtained before or during the term of this agreement.

Article 5

- 5.1. This agreement does not impose on either party an obligation to disclose any Confidential Information to the other party.
- 5.2. This agreement is governed exclusively by German law. For any disputes arising out of or in connection with this agreement the place of jurisdiction for both parties shall be Frankfurt am Main, Federal Republic of Germany. Both parties hereby submit to the jurisdiction of the court of Frankfurt am Main.
- 5.3. Any amendments to or modifications of this agreement must be in writing in order to be valid. The same applies for the waiver of this written form requirement.
- 5.4. If any part of this agreement is or becomes invalid or infeasible, the remaining provisions remain in full force and effect. The invalid or infeasible provision will be replaced by a valid and feasible provision that economically matches as closely as possible the invalid or infeasible provision.

[Customer] by:

Röders GmbH by:

Place/Date: _____

Place/Date: Soltau, _____

会社取締役・役員の秘密保持義務

1) 会社情報の秘密保持

- 内部者情報の利用禁止は、秘密保持義務とは異別

インサイダー取引防止規程

第1章 総 則

(目的)

第1条 この規程は、ホワイトロック・グループにおけるインサイダー取引の未然防止をはかるため、役職員がその職務に関して知り得た重要事実の管理、役職員による株式等の売買の規制および役職員の服務に際して遵守すべき基本的事項を定めることを目的とする。

(法令・諸規則の遵守)

第2条 役職員は、証券取引法その他の関係法規、諸通達およびこの規程その他の諸規程を遵守し、インサイダー取引を未然に防止するよう努めなければならない。

第2章 用語の定義

(インサイダー取引)

第3条 インサイダー取引とは、役職員が職務に関して知り得た重要事実により、ホワイトロック・グループまたは他の会社の株式等の売買を行うことをいう。

(役職員)

第4条 役職員とは、ホワイトロック・グループの取締役、監査役およびホワイトロック・グループと雇用関係を有するすべての従業員ならびに派遣、労務提供契約等により業務に従事する者をいう。

(ホワイトロック・グループおよび関係会社)

第5条 ホワイトロック・グループとは、ホワイトロック株式会社および関係会社をいう。

- 2 関係会社とは、ホワイトロック株式会社が提出した直近の有価証券届出書、有価証券報告書または半期報告書において、企業グループに属する会社として記載された会社およびその他のグループ会社をいう。

(重要事実)

第6条 重要事実とは、別表に掲げるホワイトロック・グループおよび他の会社に関する事実をいう。

(株式等の売買)

第7条 株式等の売買とは、ホワイトロック・グループまたは他の会社の発行する有価証券（上場、店頭登録または店頭管理されている株券、新株引受証書、社債券、転換社債券および新株引受権付社債券その他政令で定める証券または証書）の売買その他の有償の譲渡または譲受を自己の計算において行うことをいう。

(公表)

第8条 公表とは、次の場合をいう。

- (1) 証券取引法第25条の規定により、当該重要事実を記載した有価証券届出書、有価証券報告書等が公衆の縦覧に供せられたとき
- (2) 証券取引法施行令第30条の規定により、東京証券取引所または大阪証券取引所において電磁的方法により公開されたとき
- (3) 会社が2以上の報道機関に公開し、12時間を経過したとき

第3章 重要事実の管理

(重要事実の機密保持)

第9条 役職員は、職務の遂行のため必要な場合を除き、職務に関して知り得た未公表の重要事実を秘密に保持し、正当な理由なく第三者に伝達してはならない。

- 2 部門長は情報管理の責任者として重要事実の社内外への漏えい防止に必要な措置をとらなければならない。

(重要事実の伝達)

第10条 役職員は、ホワイトロック・グループに係る未公表の重要事実を知り得た場合は、直ちにホワイトロック・グループ各社の総務部等の情報管理部門へ連絡しなければならない。

- 2 関係会社は、ホワイトロック・グループに係る未公表の重要事実を知り得た場合は、直ちにホワイトロック株式会社総務部長へ連絡しなければならない。

(重要事実の判定)

第11条 役職員は、職務に関して知り得た事実が重要事実に該当するか否か疑義を生じた場合は、部門長に報告してその指示によらなければならない。

- 2 前項の場合、部門長は重要事実に該当するか否かが容易に判定し難い場合は、ホワイトロック株式会社総務部長に報告し、判定を求めなければならない。

(重要事実の公表)

第12条 重要事実の公表は、政令の定めに従って取締役会において決議し、ホワイトロック株式会社総務部長が行う。

- 2 前項にかかわらず他の役職員が重要事実の公表を行う場合は、所定の決裁手続を経て行わなければならない。

WHITEROCK GROUP **Regulations for Prevention of Insider Trading**

Article I **General Provisions**

Section 1. Objective

These Regulations for Prevention of Insider Trading set forth the requirements for preservation of the Material Nonpublic Information learned or developed by Directors, Officer and Employees of through their service or employment for Whiterock Group, restrictions on trading in stock and other securities by them and

the principal responsibilities to be complied with by them during their service and employment in order to prevent the Insider Trading at Whiterock Group.

Section 2. Compliance with Government Rules and other Regulations

The Officers and Employees of Whiterock Group shall comply with the Securities and Exchange Law and other ordinances, regulations and orders thereunder, administrative circulars as well as these Regulations and other rules and regulations and endeavor to prevent the Insider Trading.

Article II Definition of Terms

Section 3. Insider Trading

The term “**Insider Trading**” refers to the trading in stock and other securities of Whiterock Group and other companies by the Officers and Employees of Whiterock Group by exploiting the Material Nonpublic Information learned or developed through their service or employment.

Section 4. Officers and Employees

The term “**Officers and Employees**” refer to directors, company auditors of, any and all employees employed by, and seconded or temporary staff working under secondment or staffing agreements, etc., with Whiterock Group.

Section 5. Whiterock Group and Affiliated Companies

5.1 The term “**Whiterock Group**” refers to Whiterock Corporation (the “Company”) and its Affiliated Companies.

5.2 The term “**Affiliated Companies**” refer to the companies described as member companies of Whiterock Group in the latest securities registration statement, securities report or semi-annual report filed by Whiterock Corporation and other Whiterock Group companies.

Section 6. Material Nonpublic Information

The term “**Material Nonpublic Information**” refers to the information regarding Whiterock Group and other Whiterock Group companies and listed in Exhibit attached hereto.

Section 7. Trading in Stocks and Other Securities

The term “**Trading in Stocks and Other Securities**” refers to the purchase or sale, other transfer or assignment for consideration of securities issued by Whiterock Group or other companies (share certificates, certificate of preemptive rights, bonds, convertible bonds, bonds with subscription warrants and other securities and certificates designated by Cabinet Order, whether listed, traded over the counter, or traded on the Pink Sheets after delisting (*tento kanri*)) on trader’s own account.

Section 8. When Information is made “Public”

Information shall be deemed to be made “public” earlier of:

- (1) When securities registration statement or securities report or report, etc., which includes the relevant Material Nonpublic Information is offered for public inspection pursuant to Article 25 of the Securities and Exchange Law;
- (2) When such Information is disclosed by an electro-magnetic method to the marketplace at Tokyo Stock Exchange or Osaka Stock Exchange pursuant to Section 30 of the Securities and Exchange Law Enforcement Order; or
- (3) When twelve (12) hours have elapsed after the Company disclosed such Information to more than two financial media.

Article III

Preservation of the Material Nonpublic Information

Section 9. Preservation of Material Nonpublic Information

- 9.1 The Officers and Employees shall maintain the confidentiality of all the Material Nonpublic Information learned or developed through their service or employment and shall not pass on such Information to any third party without justifiable cause unless disclosure of such Information is required to be made to a person who has the need-to-know to discharge his/her duties.
- 9.2 Each Head of Department shall, as a person in charge of preservation of the Material Nonpublic Information, carry out the necessary measures to prevent the divulgence of such the Material Nonpublic Information outside the Company.

Section 10. Notification of Acquisition of Material Nonpublic Information

- 10.1 If any one of the Officers and Employees learns or develops the Material Nonpublic Information

regarding Whiterock Group, he/she shall forthwith notify such acquisition of Information to the information management department such as corporate affairs departments, etc., of Whiterock Group companies.

- 10.2 If any one of the Affiliated Companies learns or develops the Material Nonpublic Information regarding Whiterock Group, it shall forthwith notify such acquisition of Information to the General Manager of Corporate Affairs Department of Whiterock Corporation.

Section 11. Determination of Materiality of Material Nonpublic Information

- 11.1 In any one of the Officers and Employees feels doubt as to whether the information which he/she learns or develops falls within the Material Nonpublic Information, he/she shall forthwith notify it to the Head of Department for its instruction.
- 11.2 In the case of immediately preceding paragraph and the Head of Department cannot determine whether such information falls within the Material Nonpublic Information with confidence, he/she shall escalate it to the General Manager of Corporate Affairs Department of Whiterock Corporation for its determination.

Section 12. Disclosure of Material Nonpublic Information

- 12.1 Disclosure of the Material Nonpublic Information shall be made by the General Manager of Corporate Affairs Department of Whiterock Corporation by the resolution of the Board of Directors of the Company in compliance with the requirements provided for in the Cabinet Ordinance.
- 12.2 Notwithstanding the immediately preceding paragraph, if any one of the Officers and Employees other than the General Manager of Corporate Affairs Department is assigned to disclose the Material Nonpublic Information, it shall be made after completing the prescribed process for clearance.

共同研究と秘密保持

1) 共同研究は秘密保護の限界事例

Article 6. TREATMENT OF CONFIDENTIAL INFORMATION

6.1 Confidentiality.

6.1.1 General.

(a) DIVERSA and DOW each recognize that the other Party's Confidential Information constitutes highly valuable and proprietary confidential information. Subject to the terms and conditions of Article 8, DIVERSA and DOW agree that, except as required by applicable law, rule or regulation (including the filing and prosecution of patent applications) or judicial or administrative order, during the Agreement Term and for [*****] years thereafter, unless these terms are modified by the License Agreement after the expiration of the Agreement Term that:

(i) it will keep confidential and will cause its employees, consultants, and Affiliates, to keep confidential, all Confidential Information of the other Party that is disclosed to it, or to any of its employees or consultants, under or in connection with this Agreement; and

(ii) neither it nor any of its respective employees, consultants or Affiliates shall use Confidential Information of the other Party for any purpose whatsoever, except as expressly permitted in this Agreement.

(b) Notwithstanding subsection (a) above: (i) either Party may disclose the other Party's Confidential Information to the extent reasonably necessary in prosecuting or defending litigation, complying with applicable governmental regulations or court orders or otherwise submitting information to tax or other governmental authorities; provided that, if a Party is required to make any such disclosure of the other Party's Confidential Information, it will give reasonable advance notice to the other Party of such disclosure and will use reasonable efforts to secure confidential treatment of such Confidential Information (whether through protective orders or otherwise); and (ii) the Parties will reasonably cooperate with each other in the making of reasonable disclosures of Confidential Information to actual and potential agents, investment bankers, investors and potential investors of each Party; provided, however, that such disclosures shall be critically required for an investment objective, notice shall be provided to the Party who owns the Confidential Information to protect its rights, and only be made under the terms of a confidentiality agreement providing protections no less stringent than those contained herein.

6.1.2 Restricted Access.

(a) Disclosure of a Party's Confidential Information to any of the officers, employees, consultants or agents of the other Party shall be made only if and to the extent necessary to carry out rights and responsibilities under this Agreement, shall be limited to the maximum extent possible, consistent with such rights and responsibilities, and shall only be made to persons who are bound to maintain the confidentiality thereof and not to use such Confidential Information except as expressly permitted by this Agreement. If DOW discloses any DIVERSA Confidential Information to [*****], it shall do so under these same terms and conditions of this Section 6.1.2.

(b) Each Party shall use at least the same standard of care, but no less than a reasonable standard of care for this industry, as it uses to protect its own Confidential Information to ensure that its [*****], employees, agents, consultants and other representatives do not disclose or make any unauthorized use of Confidential Information of the other Party. Each Party shall promptly notify the other Party of any unauthorized use or disclosure of Confidential Information of the other Party.

(c) Within [*****] days following termination or expiration of this Agreement, each Party will return to the other Party, or destroy, upon the written request of the other Party, all Confidential Information disclosed to it by the other Party pursuant to this Agreement, including all copies and extracts of documents; provided that a Party may retain Confidential Information of the other Party relating to any license or right to use Intellectual Property that survives such termination and one copy of all other Confidential Information may be retained in confidential and inactive archives solely for the purpose of establishing the contents thereof and to determine the continuing obligations of each Party.

6.1.3 Employee Confidentiality Agreements.

DIVERSA and DOW each represent that all of its employees and any consultants to such Party participating in the R&D Program or who shall otherwise have access to Confidential Information of the other Party are bound by written agreements to maintain such information in confidence and not to use such information except as expressly permitted herein. Each Party agrees to [*****] by which its employees and consultants are bound.

6.2 Publicity.

Except as expressly provided herein, neither Party may disclose the existence or terms of this Agreement without the prior written consent of the other Party; provided, however, that either Party may make such disclosure to the extent required by law and that either Party may make a disclosure of the existence of this Agreement to its attorneys, advisers, investors, prospective investors, lenders and other financing sources, under circumstances that reasonably ensure the confidentiality thereof. Notwithstanding the foregoing, the Parties shall mutually agree upon a press release to announce the execution of this Agreement, together with a corresponding Q&A outline for use in responding to inquiries about the Agreement; thereafter, DOW and DIVERSA may each disclose to Third Parties the information contained in such press release and Q&A outline without the need for further approval by the other Party. In no event shall the financial terms of this Agreement be publicly disclosed, except to the extent required by any Securities and Exchange Commission filings or regulations, but all financial terms must be redacted prior to submission. In addition, DIVERSA may (i) make public statements regarding Licensed [*****] by announcing in general terms the achievement of milestones, following consultation with DOW and with the prior written consent of DOW, and (ii) without the prior consent of DOW, make public statements, without identifying DOW, regarding the overall success rate(s) achieved by and/or for its customers with the use of its technology, including a general description of activities undertaken in connection with the R&D Program, and success of such activities. DOW is free to make public statements, press releases, and the like, with respect to Licensed [*****].

6.3 Publication.

A Party wishing to publish or otherwise publicly disclose its Research [*****] shall first submit a draft of the proposed manuscripts simultaneously to all members of the RMC for

review by the other Party at least [*****] days prior to any submission for publication or other public disclosure. To avoid loss of patent rights as a result of premature public disclosure of patentable information, the reviewing Party shall notify the submitting Party in writing within [*****] days after receipt of such proposed disclosure whether the reviewing Party desires that a patent application be filed on any invention disclosed in such proposed disclosure. In the event that the reviewing Party desires such filing, the submitting Party shall withhold publication or disclosure of such proposed disclosure until the earlier of (i) the date a patent application is filed thereon, or (ii) the date the Parties determine after consultation that no patentable invention exists, or (iii) [*****] days after receipt by the submitting Party of the reviewing Party's written notice of the reviewing Party's desire to file such patent application. If the proposed disclosure contains Confidential Information of the reviewing Party that is subject to nondisclosure obligations under this Article 6, the submitting Party agrees to remove such Confidential Information upon request of the reviewing Party.

2) 特許権取得

➤ 日本の特許法第29条（公知・公用）、第30条（発明の新規性の喪失の例外）

（特許の要件）

第二十九条 産業上利用することができる発明をした者は、次に掲げる発明を除き、その発明について特許を受けることができる。

- 一 特許出願前に日本国内又は外国において公然知られた発明
- 二 特許出願前に日本国内又は外国において公然実施をされた発明
- 三 特許出願前に日本国内又は外国において、頒布された刊行物に記載された発明又は電気通信回線を通じて公衆に利用可能となつた発明

2 特許出願前にその発明の属する技術の分野における通常の知識を有する者が前項各号に掲げる発明に基いて容易に発明をすることができたときは、その発明については、同項の規定にかかわらず、特許を受けることができない。

（発明の新規性の喪失の例外）

第三十条 特許を受ける権利を有する者の意に反して第二十九条第一項各号のいずれかに該当するに至つた発明は、その該当するに至つた日から六月以内にその者がした特許出願に係る発明についての同条第一項及び第二項の規定の適用については、同条第一項各号のいずれかに該当するに至らなかつたものとみなす。

2 特許を受ける権利を有する者の行為に起因して第二十九条第一項各号のいずれかに該当するに至つた発明（発明、実用新案、意匠又は商標に関する公報に掲載されたことにより同項各号のいずれかに該当するに至つたものを除く。）も、その該当するに至つた日から六月以内にその者がした特許出願に係る発明についての同条第一項及び第二項の規定の適用については、前項と同様とする。

3 前項の規定の適用を受けようとする者は、その旨を記載した書面を特許出願と同時に特許庁長官に提出し、かつ、第二十九条第一項各号のいずれかに該当するに至つた発明が前項の規定の適用を受けることができる発明であることを証明する書面を特許出願の日から三十日以内に特許庁長官に提出しなければならない。

3) 秘密保持義務を課す限界

- 教育・研究機関の公益性 (Academic Mission) との関係
 - 研究に参加する学生、留学生に、研究成果の守秘を求めるには限界がある

14. Publications.

a. Right to Publish. Subject to any applicable confidentiality obligations, Sponsor understands that Carnegie Mellon is free to publish its Project work (including reports and papers of research and other activities conducted under the Project) in accordance with academic standards. Any such reports or papers may refer to the fact that the Project was conducted pursuant to a grant from Sponsor.

b. Review and Comment. During the Term and for a period of two (2) years from the End Date, Carnegie Mellon agrees to provide Sponsor with a copy of any such Project reports or papers (excluding student thesis and/or dissertations) for review and comment at least thirty (30) days prior to submission for publication. Sponsor can then request deletion from the publication of any Sponsor Confidential Information that has been inadvertently included and/or can request an additional sixty (60) day delay in submission for publication to allow time for filing of patent/copyright protection on Intellectual Property in which Sponsor has an ownership interest (such as Joint Intellectual Property).

14. 公表.

a. 公表権. 適用されるあらゆる秘密保持義務を前提とするものの、スポンサーは、本大学が、アカデミックな規準にしたがい、その行った本プロジェクトの作業成果を自由に発表できること（研究レポートおよび研究論文並びに本プロジェクトに基づき行われるその他の活動を含む）を、了解している。かかるレポートまたは論文すべてにおいて、本プロジェクトがスポンサーからの財政的援助によって行われた事実を紹介することがある。

b. 確認及び意見提出. 本件契約期間中および本件終了日から二(2)年間は、本大学は、公表するために資料を提出する少なくとも三十(30)日前までに、確認および意見提出の機会を与えるために、かかる本プロジェクトのレポートまたは論文すべての写し（但し、学生の単位取得論文および/または学位請求論文を除く）を1部、スポンサーに提供することに同意する。その後、スポンサーは、不注意で記載されたスポンサーの何らかの本件秘密情報を公表物から削除するよう要求することができるが、および/または、スポンサーが一部でも権利を有している本件知的財産（共同保有知的財産のような）について、特許権/著作権上の権利確保の申請ができる時間を与えるために、公表のための資料の提出をさらに六十(60)日送らせるよう請求することができる。

4) 研究成果の帰属

- 研究成果の帰属規定は、情報の漏洩ではないが、情報のそのものの帰属の喪失をまねく

8. Protecting Project Intellectual Property.

a. Definition. “Intellectual Property Protections” means the registration, application, filing, prosecution or maintenance of a patent, copyright, trademark or other protective measure for Intellectual Property.

b. Obtaining Protection. Carnegie Mellon may, in its discretion, file for and maintain Intellectual Property Protections anywhere in the world for any or all Carnegie Mellon Intellectual Property. Sponsor is free to ask Carnegie Mellon to pursue Intellectual Property Protections for such Intellectual Property in a particular country(ies) at the Sponsors expense. Either party may file for and maintain Intellectual Property Protections for Joint Intellectual Property developed under this Agreement. In the event that a party wants to obtain or maintain any Intellectual Property Protections concerning Joint Intellectual Property, the other party agrees to execute any documentation reasonably requested.

9. Use and Protection of Joint Intellectual Property.

a. Rights to Joint Intellectual Property; Sharing of Expenses. Joint Intellectual Property shall be owned equally by the parties. Except as provided below, the parties agree: (a) to share equally all expenses incurred in obtaining and maintaining Intellectual Property Protections on Joint Intellectual Property, and (ii) that each party shall have the right to license such Joint Intellectual Property to third parties (with the right to sublicense) without accounting to the other and without the consent of the other. In the event that consent by each joint owner is necessary for either joint owner to license the Joint Intellectual Property, the parties hereby consent to the other party's grant of one or more licenses under the Joint Intellectual Property to third parties and shall execute any document or do any other act reasonably requested to evidence such consent.

b. Exceptions to Expense Sharing. Notwithstanding the foregoing, a party may decide that it does not want to financially support Intellectual Property Protections for certain Joint Intellectual Property (a “Non-Supporting Party”). In that case, the other party is free to seek and obtain such Intellectual Property Protections at its own expense (a “Supporting Party”), provided that title to any such Intellectual Property Protections shall still be held jointly by the parties. However, if the Non-Supporting Party then subsequently licenses and/or otherwise uses the Joint Intellectual Property for economic gain in a particular country that is covered by the Intellectual Property Protections obtained by the Supporting Party, then Non-Supporting Party agrees to pay: (a) fifty percent (50%) of the fees and expenses incurred by the Supporting Party for the Intellectual Property Protections, plus (b) interest accruing from the date upon which such costs were incurred at the rate per annum announced from time to time by the Wall Street Journal as the prime rate.

10. Review and Evaluation License Granted to Sponsor. Provided Sponsor has fulfilled (and continues to fulfill) any and all payment obligations to Carnegie Mellon as contemplated by this Agreement, Carnegie Mellon hereby grants to Sponsor a non-exclusive, non-transferable, royalty-free, perpetual license for any and all Carnegie Mellon Intellectual Property listed as deliverables in Appendix A (“Deliverables”) for the Sponsors internal operations and internal, non-commercial research use (“Review and Evaluation License”). Pursuant to such Review and Evaluation License, Sponsor may copy and distribute the Deliverables to individuals internally within its own organization. Sponsor may also modify the Deliverables, provided that Sponsor may only use such modifications within the scope of this Review and Evaluation License and hereby assigns to Carnegie Mellon any and all rights to such modifications. Unless source code is delivered to Sponsor, Sponsor agrees that it shall not (and will not allow others to) decompile or reverse engineer any Deliverables. Except for the

rights granted above, all other rights in the Deliverables remain with Carnegie Mellon. If Sponsor would like additional rights to the Deliverables (including but not limited to the right to use the Deliverables for commercial marketing, production, redistribution, sale, rent, lease, sublicensing assignment, publication, or dissemination) it must request to negotiate a commercial license as described in Section 12 below.

11. Internal Use Rights Granted to Carnegie Mellon. Sponsor hereby grants to Carnegie Mellon a non-exclusive, non-transferable, royalty-free, perpetual license for all Sponsor Intellectual Property for Carnegie Mellon's internal academic and research purposes ("Research Use License"). Pursuant to such Research Use License, Carnegie Mellon may copy, distribute, modify and use the Sponsor Intellectual Property for research purposes and general academic use within Carnegie Mellon, but otherwise shall not, nor permit any third party to, modify, decompile, reverse engineer, redistribute, repackage, encumber, sell, rent, lease, sublicense, assign, time-share, publish, broadcast, circulate, market, donate, disseminate, retransmit, or commercially-exploit the Sponsor Intellectual Property or any part thereof.

8. 本プロジェクトに関する知的財産権の権利確保.

a. 定義. 「知的財産権確保措置」とは、特許権、著作権、商標権の登録、出願、提出、申請、登録手続追行または維持、あるいは本件知的財産に関するその他の権利確保のための措置を意味する。

b. 権利確保の取得. 本大学は、その裁量にしたがい、本大学帰属知的財産一切については、世界中のあらゆるところで、知的財産権確保措置のための申請を行い、またこれを維持することができる。スポンサーは、スポンサーが経費を負担する場合には、特定の国（々）で、かかる本件知的財産のために知的財産権確保措置を追行するよう本大学に対し求めることが自由にできる。何れの当事者も、本契約にもとづき開発された共同保有知的財産については、知的財産権確保措置のための申請を行い、また維持することができる。ある当事者が、共同保有知的財産に関して知的財産権確保措置を取得し、または維持することを望む場合には、他方当事者は、合理的に要求されるあらゆる文書を作成することに同意する。

9. 共同保有知的財産の利用および権利確保.

a. 共同保有知的財産に対する権利；経費の共同負担. 共同保有知的財産は、均等に両当事者がこれを所有するものとする。以下に規定のある場合を除き、両当事者は (i) 共同保有知的財産についての知的財産権確保措置を取得し、およびこれを維持するために要した経費すべてを均等に負担すること、および (ii) 各当事者は、他方当事者に会計報告をすることを要せず、また他方当事者の同意を要せず、かかる共同保有知的財産を第三者に（再実施許諾権付きで）実施許諾することのできる権利を有していることに同意する。何れかの共同権利者が、共同保有知的財産を実施許諾するにあたって、各共同権利者の同意を要する場合に備え、両当事者は、当該共同保有知的財産にもとづき第三者に一件または複数件のライセンスを他方当事者が許諾することを、ここに承諾し、また、かかる承諾を証明するための文書を作成し、そのために合理的に要求されるその他の措置を講ずるものとする。

b. 経費共同負担の例外. 前記規定にかかわらず、当事者は、一定の共同保有知的財産について、知的財産権確保措置のための財政的な負担を負うことを望まない旨決定することができる（「経費非出捐当事者」）。かかる場合にも、他方当事者は、自ら費用を負担して、自由にかかる知的財産権確保措置を求め、これを取得することができる（「経費出捐当事者」）が、但し、かかる知的財産権確保措置の名義は両当事者間で共同保有されるものとする。しかしながら、経費出捐当事者が取得した知的財産権確保措置の対象である共同保有知的財産を、経費非出捐当事者が、特定の国で、経済的な利得を得るために実施許諾し、および/またはその他のかたちで利用しようとする場合には、経費非出捐当事者は、(a) 知的財産権確保措置を講ず

るために経費出捐当事者が負担した料金と経費の五十(50%)に、(b) かかる費用を負担した日から、ウォール・ストリート・ジャーナル(the Wall Street Journal)紙上にプライムレートとして随時発表される年利率で算出した利息を加算した金額を、支払うことに同意する。

10. 検証および評価用ライセンスのスポンサーへの許諾. スポンサーが、本契約に規定するとおり本大学に対して負う支払義務一切を履行済であること（および引き続き履行していること）を条件に、本大学は、別紙 A に提供物（「本件提供物」）として列記される本大学帰属知的財産一切について、スポンサーが社内で業務用に、また社内の非商用研究で使用するのことができる、非独占的、譲渡不能、ロイヤルティ無料の、永続的なライセンスを、ここに、スポンサーに対し許諾する（「検証および評価用ライセンス」）。かかる検証および評価用ライセンスの規定にしたがい、スポンサーは、その社内で、社内用に本件提供物を複写複製し、また社内の個人に社内用に配布することができる。スポンサーは、また、本件提供物を変更することができるものとするが、但し、これはスポンサーがかかる変更物をかかる検証および評価用ライセンスの範囲内で使用すること、また、かかる変更物に関する一切の権利をここに本大学に対して譲渡することを条件とする。スポンサーにソースコードが提供される場合を除き、スポンサーは、いかなる本件提供物も逆コンパイルまたはリバースエンジニアリングしない（また、第三者がかかる行為を行うのを許してはならない）ことに同意する。上記において許諾される権利を除き、本件提供物に対するその他すべての権利は、本大学がこれを留保する。スポンサーが、本件提供物についてその他の権利を取得することを望む場合には（本件提供物を商用のマーケティングのため、生産、再頒布、販売、レンタル、リース、再使用許諾、譲渡、公表または配布するために使用する権利を含む（これらに限定されない））、スポンサーは、下記第 12 条の規定にしたがい、商用ライセンスの交渉を求めるものとする。

11. 学内使用权の本大学への許諾. スポンサーは、スポンサー帰属知的財産すべてについて、本大学が学内でアカデミックな研究用に使用することのできる、非独占的、譲渡不能、ロイヤルティ無料の、永続的なライセンスを、ここに、本大学に対し許諾する（「研究用ライセンス」）。かかる研究用ライセンスの規定にしたがい、本大学は、本大学内において研究用目的で、また一般的なアカデミックな用途で、スポンサー帰属知的財産を複写複製し、配布し、変更しまた使用することができるが、その他の場合には、スポンサー帰属知的財産またはそのいかなる一部も、これを変更し、逆コンパイルし、リバースエンジニアリングし、再頒布し、リパッケージし、これに物上負担を設定し、販売、レンタル、リース、再使用許諾、譲渡、タイムシェアリングし、公表し、放送し、回覧し、マーケティングし、寄付し、配布し、再送信しまたは営利目的で利用してはならず、また第三者がかかる行為を行うのを許してはならないものとする。

5)「知らせてもらいたくない情報」条項

- 研究委託機関側に情報流用を禁止する体制を求める
 - 情報コンタミネーションにより、自社本来の情報についての権利を失う

その他契約中の秘密保持条項

1) 企業提携・ジョイントベンチャー契約中の秘密保持条項

“**Confidential Information**” means, subject to the limitations set forth in Section 9.2, (a) any information of a Party with respect to which the other Party has a confidentiality obligation as of the date of this Agreement pursuant to a written agreement between the Parties and (b) any technical or business information delivered after the date of this Agreement that relates to a Party’s research and development, inventions, products, production, manufacturing, finances, marketing, customers or future business plans, including any trade secrets, know-how, data, formulas, processes, or other intellectual property rights; *provided, however*, that no information delivered after the date of this Agreement shall be deemed Confidential Information unless, (i) in the case of information delivered in tangible form (including by e-mail), such information is marked “confidential” or “proprietary” and (ii) in the case of information delivered orally, such information is designated upon delivery as confidential and delivered in tangible form (including by e-mail) marked “confidential” or “proprietary” within 30 days after such oral delivery.

(a)

3. CONFIDENTIALITY

3.1 Confidentiality.

Except as expressly authorized in writing by the other Party, each Party agrees (a) not to use the other Party’s Confidential Information for any purpose other than in the performance of its obligations under this Agreement or any of the other Transaction Documents to which it is a party and (b) not to disclose any of the other Party’s Confidential Information except to those employees, agents and representatives who have a “need to know” such Confidential Information for the purposes of this Agreement or the other Transaction Documents. In furtherance, and not in limitation of the foregoing, each Party agrees that it shall (i) leave in place any proprietary or confidential legends or markings placed upon any Confidential Information by the disclosing Party and (ii) instruct and require its employees, agents and representatives that receive such Confidential Information to maintain the confidentiality of such Confidential Information and not to use such Confidential Information except as expressly permitted in this Agreement. Such obligations shall apply with respect to Confidential Information for the term of this Agreement and thereafter until the **[third]** anniversary of the expiration or termination of this Agreement.

3.2 Exceptions.

Notwithstanding the other provisions of this Agreement, nothing received by either Party will be considered to be Confidential Information of the other if it: (a) becomes a matter of public knowledge through no action or inaction of the Party receiving the Confidential Information; (b) is disclosed by the Party providing the Confidential Information to a third party without a duty of confidentiality; (c) is rightfully received by the receiving Party from a third party without a duty of confidentiality; (d) was known to the receiving Party before its first receipt from the disclosing Party, as shown by files existing at the time of initial disclosure; or (e) is independently developed by the receiving Party without use of the other Party’s Confidential Information.

3.3 Rights to Confidential Information.

All Confidential Information shall remain the sole property of the disclosing Party. The receiving Party shall have no rights to the Confidential Information of the disclosing Party except as may be expressly provided in the Transaction Documents.

3.4 Return of Information.

After the expiration or termination of this Agreement for any reason, upon written request, each Party shall promptly (a) discontinue the use of, and return within 30 days all originals and copies of, any Confidential Information of the other Party that has been fixed in any tangible means of expression and (b) erase any such Confidential Information that has been stored by electronic means and provide to the other Party a written certification of such erasure; *provided, however*, that a Party shall not be required to discontinue use of, return or erase any Confidential Information that is useful or necessary in the exercise of its rights under any Transaction Documents that may survive expiration or termination of this Agreement.

3.5 Confidentiality of Agreement; Publicity.

Each Party agrees that the terms and conditions of this Agreement and the other Transaction Documents shall be treated as confidential information and that no reference thereto shall be made thereto without the prior written consent of the other Party (which consent shall not be unreasonably withheld) except (a) to its accountants, banks, financing sources, lawyers and other professional advisors, provided that such parties undertake in writing (or are otherwise bound by rules of professional conduct) to keep such information strictly confidential, (b) in connection with the enforcement of the Agreement, (c) in connection with a merger, acquisition or proposed merger or acquisition or (d) pursuant to joint press releases prepared in good faith. The Parties will consult with each other, in advance, with regard to the terms of all proposed press releases, public announcements and other public statements with respect to the transactions contemplated by the Transaction Documents. The Parties agree to consult in accordance with the foregoing upon (i) a worldwide joint press release to be issued as soon as practical after the Transaction Document Signing Date and (ii) public announcements promoting the JV Company's Business to be issued from time to time thereafter.

3.6 Court or Administrative Order.

In the event that either Party is requested or required (pursuant to any governmental rule, regulation, or from or through requests for information or documents by any Government Authority in connection with legal proceedings, civil investigations, or other similar legal processes) to disclose any Confidential Information of the other Party or any of the terms and conditions of this Agreement or the other Transaction Documents, such Party shall provide the other Party with prompt written notice before it complies with such request or requirement so that the other Party may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. If, in the absence of a protective order or other remedy or the receipt of a waiver by the other Party, the Party being requested or required to disclose any Confidential Information of the other Party or any of the terms and conditions of this Agreement or the other Transaction Documents is nonetheless legally compelled to disclose such information, it may, without liability hereunder, disclose only that portion of such information which it is legally compelled to disclose.

「秘密情報」とは、第 9.2 条に規定する制限にしたがうものの、(a) 両当事者間の書面による合意にしたがい、本契約書の日現在で、他方当事者がそれにつき守秘義務を負っている一方当事者のあらゆる情報、並びに (b) あらゆる営業秘密、ノウハウ、データ、方式もしくは製法並びにその他の知的財産権を含む、当事者の研究及び開発、発明、製品、生産、製造、資金調達、マーケティング、顧客もしくは将来の事業計画に関する、本契約書の日付より後に交付されるあらゆる技術情報又は事業情報を意味する。しかしながら、本契約書の日付より後に交付されるいかなる情報であっても、(i) 情報が有体物のかたちで引き渡される場合（電子メールによるものを含む）には、かかる情報に「秘密」又は「固有」と記銘し、また (ii) 情報が口頭により交付される場合には、かかる情報を交付するにあたり秘密として指定して、さらに、かかる口頭の交付から<30 日>90 日以内に「秘密」もしくは「固有」と記銘する有体物のかたちで（電子メールによるものを含む）引き渡されない限り、これは秘密情報であるとはみなされないものとする。

秘密保持

3.7 秘密保持.

他方**当事者**から書面にて明示の承認を受けている場合を除き、各**当事者**は、(a) **本契約書**又は**当事者**が当事者であるその他の**取引文書**の何れかに基づき義務を履行する以外のいかなる目的のためにも、他方**当事者**の**秘密情報**を使用せず、また (b) **本契約書**又はその他の**取引文書**の目的でかかる**秘密情報**を「知る必要」のあるそれらの従業員、代理人及び代表者以外の人に対して、他方**当事者**の**秘密情報**を開示しないことに同意する。前記の趣旨を敷衍するために、前記の趣旨を制限するものでなく、各**当事者**は、(i) 開示**当事者**が何れかの**秘密情報**上に記銘した何らかの固有又は秘密であることを示す例文を、そのままの位置に残し、(ii) かかる**秘密情報**を受領するその従業員、代理人及び代表者に対して、かかる**秘密情報**を秘匿し、**本契約書**で明示に認められている場合を除き、かかる**秘密情報**を使用しないよう指示し、かように義務づけるものとする。かかる義務は、**本契約書**の契約期間中、及びその後も**本契約書**の満了又は終了から三年目の応答日まで、**秘密情報**に関して適用されるものとする。

3.8 例外.

本契約書にその他の規定がある場合もそれにかかわらず、何れかの**当事者**が受領するいかなる情報も、以下の場合に該当するときは、他方**当事者**の**秘密情報**であるとはみなされない。即ち、(a) **秘密情報**の受領**当事者**の作為もしくは不作為によることなく公知のものとなった場合、(b) 秘密保持義務を課すことなく**秘密情報**を提供する**当事者**が、これを第三者に開示した場合、(c) 秘密保持義務を負うことなく受領**当事者**が、第三者からそれを正当に受領した場合、(d) 受領**当事者**が開示**当事者**から初めて受領する前にそれを知っていた場合であって、これを当初の開示時に既に存在していた書類によって証明できるとき、又は (e) 他方**当事者**の**秘密情報**を使用することなく、受領**当事者**がそれを独自に開発したものである場合、である。

3.9 秘密情報についての権利.

すべての**秘密情報**は、開示**当事者**のもっぱらの財産として留まるものとする。**取引文書**で明示に規定される場合を除き、受領**当事者**は、開示**当事者**の**秘密情報**について何らの権利も有さないものとする。

3.10 情報の返却.

本契約書が満了し又は理由のいかんを問わず終了した後は、書面による請求があり次第、各**当事者**は、速やかに、(a) 有形の表現手段に固定された他方**当事者**の何れかの**秘密情報**の原本及び複写/複製すべての使用を中止し、これらを返却するものとし、また (b) 電子的手段により保存されたかかる**秘密情報**の一切を消去し、かかる消去について書面による証明書を他方**当事者**に対して提出するものとする。しかしながら、**当事者**は、**本契約書**の満了又は終了にかかわらず存続することのある何れかの**取引文書**に基づき、その権利を行使するのに有益又は必要である何れかの**秘密情報**については、その使用を中止し、返却し又は消去する義務を負わないものとする。

3.11 契約書についての秘密保持；公表.

各**当事者**は、**本契約書**及びその他の**取引文書**の条件を**秘密情報**として取り扱うべきこと、並びにそれらへの言及は、他方**当事者**から事前の書面による同意（かかる同意は不合理に留保されないものとする）を得ることなく行ってはならないことに同意する。但し、(a) その会計士、銀行、資金調達源、弁護士及びその他の専門的助言者に対する場合であって、かかる**当事者**が、書面にてかかる情報を厳秘することを約束している（又はその他のかたちで専門職としての行為規範により義務づけられている）場合、(b) **契約書**の強制実現に関連する場合、(c) 合併、買収又は合併もしくは買収の申出に関連する場合、あるいは (d) 誠実に用意された合同のプレスリリースにおける場合を除く。**両当事者**は、**取引文書**で規定される取引に関して、プレスリリース、公表及びその他のかたちで発表を行うことを予定する場合はすべて、その条件に関して事前に互いに協議する。**両当事者**は、上記規定にしたがって、(i) **取引文書署名日**の後、實際上なるべく早急に、全世界に向けた共同プレスリリースについて、また (ii) **本合併会社**の事業について一般の認識を高めるための公表を随時行うことについて、協議することに合意する。

3.12 裁判所又は行政官庁からの命令.

何れかの**当事者**が、（何れかの政府の規則、規制にしたがい、又は司法手続、民事調査手続又はその他同様な法的手続に関連して、何れかの**政府機関**からの情報もしくは文書請求を受けたことにより又はそれを通じて）、他方**当事者**の何れかの**秘密情報**又は**本契約書**もしくはその他の**取引文書**の条件の何れかを開示するよう請求を受け又は義務づけられた場合には、かかる**当事者**は、他方**当事者**が保護命令もしくはその他の適切な救済を求めることができるように又は**本契約書**の規定の順守を求める権利を放棄できるよう、かかる請求又は要求に応じる前に、他方**当事者**に対して速やかな書面による通知を行うものとする。仮に、保護命令もしくはその他の救済がなく、又は他方**当事者**から権利放棄の知らせを受け取っていない場合にも、他方**当事者**の何れかの**秘密情報**又は**本契約書**もしくはその他の**取引文書**の条件の何れかを開示するよう請求され又は要求されている**当事者**は、それにもかかわらず、**本契約書**に基づく責任を負うことなくかかる情報を開示するよう法的に強制される部分に限って、かかる情報を法的に開示するよう強制されるものとする。

2) パテントライセンス契約中の秘密保持条項

4.3

4.4 4. PROTECTION OF PROPRIETARY INFORMATION.

4.5 4.1 . **Licensed Technical Information.** Licensee shall not have any right to reproduce or distribute copies or selected portions of the Licensed Technical Information, whether in printed or electronic form, without the prior written approval of Licensor, which approval shall not be unreasonably withheld; provided however, the Licensee may reproduce or distribute copies or selected portions of the Licensed Technical Information to those with a need-to-know as may be necessary to exercise Licensee's rights under Section 2.1 above.

4.2 **Proprietary Information.** Licensee and Licensor anticipate the need from time to time after the Effective Date of this Agreement to exchange proprietary scientific or technical information and items in written, graphic, oral, electronic or other tangible or intangible form ("Proprietary Information"). Such information and items, if in written, graphic, electronic or tangible form, shall be marked "Confidential" or "Proprietary" by the party disclosing such information ("Disclosing party"). If in oral or intangible form, such information shall be deemed Proprietary Information if identified as confidential or proprietary upon disclosure, if subsequently reduced to writing or other tangible form which writing shall be conspicuously marked as "Confidential" or "Proprietary," and if a copy is delivered to the Party receiving such information ("Receiving Party") within 30 days after the date of such disclosure. No sheet or page of any written material shall be labeled Proprietary Information which is not, in good faith, believed to contain Proprietary Information. Proprietary Information includes, but is not limited to the Licensed Technical Information, and shall include all analyses, compilations, studies or other documents, records, data or information prepared by the Receiving Party which contain, reflect or are generated from the Disclosing Party's Proprietary Information.

4.3 **Duty of Confidence.** The Receiving Party agrees (a) to keep in confidence all Proprietary Information disclosed to it and to use the same degree of care, but no less than reasonable care, to prevent disclosure or unauthorized use of the proprietary information as it exercises to protect its own proprietary information of a similar nature and comparable importance; (b) to disclose such Proprietary Information within the Receiving Party's organization only to those having a need-to-know for the purposes of this Agreement, and prior to any such disclosure the Receiving Party shall fully advise the recipient that he or she is required to hold in confidence all information and such information, which is not be disclosed to persons outside of the organization or to any co-employee not directly concerned with furthering the purposes of this Agreement; (c) to maintain between the Receiving Party and its officers, directors, employees, agents and consultants duly binding agreements by such persons as may be necessary or prudent to fulfill the Receiving Party's obligations under this Agreement; (d) to disclose such Proprietary Information to sublicensees or partners who are under obligation to commercialize or help develop applications for the Royalty Bearing Products only pursuant to a written non-disclosure agreement, executed prior to any disclosure, which imposes a duty of confidentiality on the licensee or partner equal to or more stringent than the that agreed to by the parties under this Section; (e) not to copy, publish or disclose such Proprietary Information to others or authorize anyone else to copy, publish or disclose such Proprietary Information to others without the prior written approval of the disclosing Party, except as provided in Section

4.4(g) below; and (f) not to use such Proprietary Information for any purpose whatsoever other than the proper exercise of the rights granted under Section 2.1 of this Agreement, or the furtherance of the purposes of this Agreement.

4.4 Exceptions. The obligations under Section 4.3 above shall not apply to (a) information which is or becomes in the public domain information without breach of this Agreement, provided that the disclosure of certain Proprietary Information in a publication such as a patent or other publication shall not free the Receiving Party with respect to its obligation to maintain in confidence any Proprietary Information not specifically disclosed therein or fairly ascertainable therefrom; (b) information possessed by the receiving Party without restriction or breach of this Agreement at the time of receipt under this Agreement; (c) information used or disclosed with prior written approval of the Disclosing Party; (d) information used or disclosed after ten years from the date of first receipt under this Agreement; (e) information independently developed by the Receiving Party without breach of this Agreement or breach of any other non-disclosure obligation to the Disclosing Party, but only to the extent demonstrated by the Receiving Party by written evidence fixed in tangible or intangible form prior to the disclosure of such information to the Receiving Party; (f) information which becomes known to the Receiving Party from another source without breach of this Agreement or any other obligation of law; or (g) information disclosed pursuant to the requirement or request of a governmental agency or valid court order; provided that the Receiving Party give immediate notice to the Disclosing Party of the issuance of such order or request, and shall use its best efforts to obtain a protective order requiring that Proprietary Information be held in confidence and shall be used only for the purpose for which the order was issued; or (h) information the disclosure of which is necessary to establish the Receiving Party's rights under this Agreement, provided that such disclosure shall be made only to the extent necessary to establish such rights.

3.13 4. 固有情報の保護.

3.14 4.1. **使用許諾技術情報.** ライセンシーは、ライセンサーから事前の書面による承認を得ることなく、印刷物であると電子的形式によるとを問わず、**使用許諾技術情報**を複製し、又はその写しあるいは選択された一部を頒布する、いかなる権利も有しないものとするが、かかるライセンサーの承認は不合理に留保されないものとする。しかしながら、ライセンシーは、上記第 2.1 条に基づくライセンシーの権利を行使するのに必要とされるところにしたいが、**使用許諾技術情報**を複製し又はその写しもしくはその選択された一部を、知る必要のある人に対して頒布することができる。

4.3 固有情報. ライセンシー及びライセンサーは、**本契約書の発効日後**、随時、文書で、図面で、口頭で、電子的に又はその他有体もしくは無体のかたちで、固有の科学的又は技術上の情報及び品目（「**固有情報**」）を交換する必要が生ずることを予想している。かかる情報及び品目には、これらが文書、図面、電子的形態をとり又は有体である場合には、かかる情報を開示する当事者（「**開示当事者**」）が、これに「秘密」又は「固有」と銘記するものとする。口頭による場合又は無体である場合には、その開示にあたり固有もしくは秘密として指定された場合において、その後書面化もしくはその他のかたちで有体化され、かかる文書に「秘密」もしくは「固有」と目立つかたちで記銘され、またかかる開示の日から 30 日以内に、その写しをかかる情報を受領した当事者（「**受領当事者**」）に交付された場合には、**固有情報**であるものとみなされるものとする。**固有情報**が含まれていないと誠実に信じられる書面によるいかなる資料についても、そのいかなる紙面又はページにも**固有情報**というラベルを貼付してはならないものとする。**固有情報**には、これらに限定されないが、**使用許諾技術情報**が含まれ、また、**開示当事者の固有情報**を含む、反映する又はこれから生成されるところの、**受領当事者**が作成

するすべての分析、編集物、研究又はその他の文書、記録、データもしくは情報が含まれるものとする。

4.5 秘密保持義務。受領当事者は、以下のとおり同意する。(a) **受領当事者**に開示されたすべての**固有情報**を秘匿し、**固有情報**の漏洩又は不正使用を防ぐため、同様な性質及び匹敵する重要性をもつ自らの固有の情報を保護するのに払うのと同じ程度の注意（但し、合理的な注意の程度を下回らない注意）を払うこと。(b) **受領当事者**の社内において、本契約書の目的においてかかる**固有情報**を知る必要のある人に対してのみ開示し、またかかる開示の前に、**受領当事者**は、受領者に対して、すべての情報を秘匿する必要のあること、またかかる情報は、社外の人に又は本契約書の目的を促進することに直接関与していない従業員に対しては開示すべきものではないことを、十分に知らしめること。(c) 本契約書に基づく義務を**受領当事者**に履行させるために必要又は賢明とされるところにしたがい、**受領当事者**とその役員、取締役、従業員、代理人及びコンサルタントとの間に、かかる人による適式に拘束力のある契約を維持しておくこと。(d) **ロイヤルティ適用商品**向けのアプリケーションを商品化し又はその開発を支援する義務を負うサブライセンシー又はパートナーに対してかかる**固有情報**を開示するにあたっては、本条に基づき当事者が合意したものと同等かこれより厳しい秘密保持義務を（サブ？）ライセンシー又はパートナーに課すところの、書面による非開示契約書をいかなる開示の前にも締結しておき、これにしたがってのみ開示を行うこと。(e) その他の者のために**固有情報**を複写/複製せず、公表又は開示しないこと、また何人に対しても、**開示当事者**から事前の書面による承認を得ることなく、その他者のためにかかる**固有情報**を複写/複製すること、公表又は開示することを承認しないこと。但し、下記第 4.4 条(g)項に規定する場合を除く。及び (f) **本契約書**第 2.1 条に基づき許諾された権利を正当に行使する目的、又は**本契約書**の目的を促進する目的以外の目的では、いかなる目的であるかを問わず一切、かかる**固有情報**を使用しないこと。

除外事由。 上記第 4.3 条に基づく義務は、以下の情報には適用されないものとする。(a) 情報が、公知のものである場合又は**本契約書**に違反することなく公知のものとなった場合。但し、ある**固有情報**が特許公報のような刊行物又はその他の刊行物で開示された場合にも、かかる開示によっては、そこで明示に開示されなかった又はそれから確実に探知できない一切の**固有情報**については、**受領当事者**はこれを秘匿する義務に関して義務を免除されないものとする。(b) 情報が、**本契約書**に基づき受領された時点において、**本契約書**の制限を受けることなく又は**本契約書**に違反することなく**受領当事者**が占有していたものである場合。(c) 情報が、**開示当事者**から事前の書面による承認を得て使用され又は開示されたものである場合。(d) 情報が、**本契約書**に基づき最初に受領された日から十年後に使用され又は開示されたものである場合。(e) 情報が、**本契約書**に違反することなく、又は**開示当事者**に対するその他一切の非開示義務に違反することなく、**受領当事者**が独自に開発したものである場合。但し、**受領当事者**に対してかかる情報が開示される前の、有体又は無体のかたちに固定された書面による証拠により、**受領当事者**がこれを証明できる範囲に限る。(f) 情報が、**本契約書**又は法律のその他一切の義務に違反することなく、他の情報源から**受領当事者**が知ることとなったものである場合。(g) 情報が、政府機関の要求もしくは要請又は有効な裁判所の命令にしたがい開示されるものである場合。但し、**受領当事者**は、かかる命令又は請求が発令され次第、これを直ちに**開示当事者**に通知し、**固有情報**を秘匿しておくよう要求する保護命令を取得するよう最善の努力を払い、また**固有情報**が、命令が発令された目的のためにのみ使用されることを条件とする。あるいは (h) 情報が、**本契約書**に基づく**受領当事者**の権利を立証するためにこれを開示することが必要なものである場合。但し、かかる開示は、かかる権利を立証するために必要な範囲でのみ行われるものとする。

3) ソフトウェアライセンス契約中の秘密保持条項

“**Confidential Information**” means all nonpublic information, whether in oral, written or other tangible form that the disclosing party designates as confidential. Confidential Information includes without limitation this Agreement and any documentation concerning the Products but excludes information that : (1) at the time of disclosure, is already lawfully in the recipient’s possession ; (2) is or becomes available to the public otherwise than through the fault of the recipient; (3) is lawfully received by the recipient from a third party without any restriction; (4) is independently developed by the recipient without the use of any “Confidential Information” of the disclosing party, and (5) the parties mutually agree in writing to disclose or publicize.

1 **Confidential Information.**

1.1 **Obligations.** Licensee expressly undertakes to keep all Confidential Information secret and confidential and not to use the Confidential Information in any way or for any purpose except as expressly permitted by this Agreement. Licensee shall take reasonable steps to prevent unauthorized disclosure or use of the Confidential Information and to prevent such Confidential Information from falling into the public domain or into the possession of any third party. Licensee shall not disclose Confidential Information to any person or entity other than its officers, employees and legal or accounting advisors who need access to such Confidential Information in order to effect the intent of this Agreement and who have entered into written confidentiality agreements with Licensee that affords equivalent or greater protection for the Confidential Information than the provisions herein. Licensee shall immediately give notice to Clickmarks of any unauthorized use or disclosure of Confidential Information. Licensee agrees that a breach of this Section will cause irreparable harm to Clickmarks which monetary remedy is not an adequate remedy, and that Clickmarks shall accordingly be entitled to injunctive or other equitable relief in the event of a breach or anticipated breach. Licensee agrees to assist Clickmarks in remedying such unauthorized use or disclosure of Confidential Information.

1.2 **Authorized Disclosure.** A disclosure by Licensee of Confidential Information either (a) in response to a valid order by a court or other governmental body, or (b) otherwise required by law, shall not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that Licensee shall provide prompt prior written notice thereof to Clickmarks.

「秘密情報」とは、口頭、書面その他の有体の形式によるとを問わず、開示当事者が秘密であると指定するすべての非公開の情報を意味する。秘密情報には、これらに限定されないが本契約書及び本件製品に関する一切のドキュメンテーションが含まれるが、以下の情報は除かれる。即ち、(1) 開示の時点で、受領者が既に合法的に占有していた情報、(2) 受領者の過失によらずして一般に入手可能である又は入手可能となった情報、(3) 何ら制限も課されることなく受領者が第三者から合法的に受領した情報、(4) 受領者が、開示当事者のいかなる「秘密情報」も利用することなく、独自に開発した情報、及び (5) 当事者が書面にて開示又は公表することを互いに合意した情報である。

2 **秘密情報.**

2.1 **義務.** ライセンシーは、すべての**秘密情報**を機密及び秘密に保つこと、**本契約書**により明示に認められている以外のいかなる方法でも又はいかなる目的でも**秘密情報**を使用しないことを明示に約束する。ライセンシーは、**秘密情報**が不正に開示され又は使用されるのを防ぐため、また、かかる**秘密情報**が公知のものとなること又は何れか第三者の占有に帰することを防ぐため、合理的な措置を講ずるものとする。ライセンシーは、**秘密情報**を、**本契約書**の目的を達成するためにかかる**秘密情報**を入手する必要のある人であって、**秘密情報**に関して**本契約書**の規定と同等かそれを上回る保護を与えている書面による秘密保持契約をライセンシーと締結しているその役員、従業員、法務又は会計上のアドバイザー以外のいかなる人又は団体に対しても、**秘密情報**を開示してはならないものとする。ライセンシーは、**秘密情報**の不正な使用又は開示があった場合には、直ちにその旨を **Clickmarks 社**に通知するものとする。ライセンシーは、本条の違反が、金銭賠償が十分な救済方法とはならない回復不能の損害を

Clickmarks 社に与えること、したがって、違反があった場合又は違反が予想される場合には、**Clickmarks 社**が、差止命令による救済方法又はその他の衡平法上の救済方法を受ける権限を有することに同意する。**ライセンサー**は、**秘密情報**のかかる不正な使用又は開示を是正するにあたって **Clickmarks 社**を支援することに同意する。

2.2 承認される開示. (a) 裁判所もしくはその他の政府機関の有効な命令に応じて、又は (b) その他法律により義務づけられる場合の何れかの場合に、**ライセンサー**が**秘密情報**を開示した場合にも、これは、**本契約書**の違反、又はその他の目的で秘密保持性を放棄したものとはみなされないものとする。しかしながら、**ライセンサー**は、その旨の事前の書面による速やかな通知を **Clickmarks 社**に対して行うものとする。

4) サプライヤー契約中の秘密保持条項

4. ARTICLE XX - NON-DISCLOSURE OF INFORMATION

5. 20.1 Proprietary Information.

Any information concerning the parties which is designated in writing as proprietary and disclosed to the other party incident to the performance of Work pursuant to this Agreement is disclosed in confidence and the transferee shall not, without the written approval of the transferor (a) use such information except in performance of the Work or in connection with the operation, maintenance and repair of the Facility, or (b) publish or otherwise disclose it to others, provided, however, that nothing herein shall limit either party's right to disclose data to potential lenders in order to obtain financing for the construction, operation or maintenance of the Facility or to a successor owner of the Facility, or which (i) was furnished to it prior to this Agreement without restriction; (ii) becomes generally available to the public otherwise than through a breach of this Agreement; or (iii) is received by either party from a third party without restriction and not in breach of this Agreement. Furthermore, Owner or Contractor may provide any such information to any Governmental Unit having jurisdiction and asserting a right to obtain such information; provided, if any such Governmental Unit demands from one party disclosure of proprietary information belonging to the other party, the party receiving such demand shall promptly notify the other party of such demand to enable the other party to take whatever legal means may be available to limit the scope or consequences of such disclosure.

6. 20.2 Press Releases.

Owner and Contractor agree that it is in their mutual interest to limit dissemination of information of strategic value to the independent power industry regarding the Facility and this Agreement. To the extent that press releases, advertisements in the trade press, or tombstones in the financial or trade press are published, then Owner and Contractor agree to attempt in good faith to reflect in any such press releases made during the first year after Commercial Operation the principal roles of Owner, Contractor in the transaction. This is not intended to imply that equal billing must be given the other party but simply that neither party can ignore the other's contributions if that party should choose to publish information.

7. 第 XX 款 — 情報の非開示

8. 20.1 独自情報

当事者に関する情報であって、独自情報であることが書面により示され、**本契約書**にしたがい**本件工事**の実施に付随して他方当事者に開示されるものはすべて、秘密に開示され、受領者は、開示者から書面による承認を得ることなく、(a) **本件工事**を履行する際を除き又は**本件発電所**の運転、保守及び修理に関連する場合を除きかかる情報を使用しても、(b) これを公表し又はその他にかたちで第三者に開示してもならないものとする。しかしながら、**本契約書**の規定は、何れかの当事者が、**本件発電所**の建設、運転もしくは保守のための融資を得るため見込み貸付人に対して又は**本件発電所**の後継所有者に対してデータを開示する権利を制限するものではなく、また、(i) 制限を課されることなく**本契約書**を締結する前に受領者に提供されたデータ、(ii) **本契約書**の違反によらずして公知のものとなったデータ、又は (iii) 制限を受けることなく、また**本契約書**に違反することなく第三者より何れかの当事者が受領したデータを、当事者が開示する権利は制限されないものとする。さらに、**発注者**又は**請負者**は、管轄権を有し、かかる情報を取得する権利を主張する**政府機関**に対して、かかる情報を提供することができる。但し、かかる**政府機関**が一方当事者に、他方当事者に帰属する独自情報を開示するよう要請した場合には、かかる要請を受けた当事者は、他方当事者がかかる開示の範囲又は結果を制限するため援用可能な、あらゆる法的手段を講ずることができるよう、かかる要請について他方当事者に速やかに通知するものとする。

9. 20.2 記者発表

発注者及び**請負者**は、**本件発電所**及び**本契約書**に関する、独立系発電業界に戦略的価値のある情報が広まることを制限することが、相互の利益に適うことに互いに同意している。記者発表、業界誌の広告又は金融その他の業界紙に掲載される起債の墓石広告で公表する範囲で、**発注者**及び**請負者**は、**商業運転**後の初年度中に行われるかかる記者発表において、本件事業における**発注者**と**請負者**の主たる役割を紹介するよう誠実に試みることに同意する。これは、広告で同等の序列を他方当事者にも与えることを要求するものでなく、何れの当事者も、当該当事者が情報を公表する選択をした場合には、単に他方当事者の貢献を無視してはならないことを意味している。