

INTERNATIONAL COURT OF ARBITRATION
INTERNATIONAL CHAMBER OF COMMERCE
Case No. XXXXXXXX

Acme Pharma, Ltd.

Claimant,

-and-

XYZ Pharma, Inc.,

Respondent

PROCEDURAL ORDER NO. 1

1. The parties have previously entered into Terms of Reference in accordance with ICC Rules of Arbitration, Article 23. The Arbitrators are executing this Procedural Order No. 1 pursuant to Articles 22(2) and 24(2) as their procedural timetable.

2. Parties and Counsel. The parties to this arbitration are identified in the caption and are represented as follows:

Counsel for Claimant Acme Pharma, Ltd.

[individual attorneys, firm name, address, and individual attorney telephone numbers and email addresses]

Counsel for Respondent XYZ Pharma, Inc.

[individual attorneys, firm name, address, and individual attorney telephone numbers and email addresses]

3. Arbitrators.

Robert B. Davidson, President of the Tribunal

JAMS
620 Eighth Avenue, 34th Floor
New York, NY 10018
Tel: (212) 607-2752
Fax: (212) 751-4099
Email: rdavidson@jamsadr.com

John McGoldrick
25 Vandeventer Avenue
Princeton, New Jersey 08542
United States of America
Email: jmcgold7@gmail.com

Hon James Robertson (Ret.)
JAMS
555 13th Street, N.W.
Washington, D.C. 20004
United States of America
Tel: (202) 533-2024
Fax: (202) 942-9186
Email: jrobertson@jamsadr.com

4. Administration.

Mr. Tunde Ogunseitan
Counsel to the Secretariat of the ICC International Court of Arbitration
Ms. Anne de Mazieres
Deputy Counsel
33-43 avenue du President Wilson
75116 Paris
France
Tel: +33 (0)1 49 53 29 05
+33 (0)1 49 5330 25
Fax: +33 (0)1 49 53 29 33
Email: icc4@iccwbo.org

5. Disclosure.

(a) Document Requests.

The parties may serve their respective requests for documents, together with brief explanations as to the relevance of each request, on or before **July 1, 2016**. Responses (including any objections, together with explanations supporting such objections to each such request or any part thereof), shall be served on or before **July 15, 2016**. The parties will thereafter meet and confer by telephone or in person in an attempt to resolve any document disputes that may have arisen.

The taking of evidence shall be conducted in accordance with the IBA Rules on the Taking of Evidence in International Arbitration to the extent that those rules are not inconsistent with the License Agreement. All document requests and responses shall be provided in the form of a Redfern Schedule

(b) Resolution of Discovery Disputes.

If the parties cannot resolve any document disputes after their meet and confer, each party may write a single letter to the Arbitrators setting forth its position on the unresolved document dispute(s). The letters will be sent electronically to the Arbitrators on **July 22, 2016**. The Arbitrators will then either issue an order resolving the document dispute(s) or convene a telephone conference with counsel to discuss the issues further. In resolving any disputes, the Tribunal intends to be guided by the IBA Rules on the Taking of Evidence in International Arbitration.

(c) Disclosure of Documents. The parties will finally deliver all documents as requested by each other, or as directed by the Tribunal, on or before **July 29, 2016**.

6. Submission of Evidence and Memorials.

(a) The Claimant shall serve its opening memorial on **August 31, 2016** setting forth, among other topics of its choosing, a summary of the legal and factual bases for its claims. Also on that date, Respondent shall serve its opening memorial setting forth, among other topics of its choosing, a summary of the legal and factual bases for its counterclaim. Each such submission shall include written witness statements from each fact and expert witness that each party intends to call to testify in support of its claim or counterclaim, as the case may be.

(b) The Respondent and Claimant shall serve its answering memorial on **September 19, 2016** setting forth, among other topics of each side's choosing, a summary of the legal and factual bases for its defense. Also on that date, Respondent and Claimant shall serve written witness statements from each fact and expert witness that it intends to call to testify in defense of the claims asserted by Claimant and the counterclaim asserted by Respondent.

(c) Each side shall serve its reply memorial and the reply fact and expert witness statements it intends to offer in response to the answering papers of the other side on **September 26, 2016**.

(d) No expert, other than an expert who has submitted a written expert report may testify at the Hearing.

(e) The fact and expert witness statements referred to above will refer to the documents upon which they rely. Such documents shall be appended to the statements. Absent an Order from the Tribunal for good cause shown, only witnesses who submit written witness statements may testify at the Hearing. Unless excused by the other party

and the Tribunal, any witness for whom a witness statement has been submitted must be made available for cross-examination at the Hearing. At the Hearing, the witness will be sworn and will verify the statements made in his or her written statement (or make any needed corrections). The party calling the fact witness may then examine him or her for no longer than 10 minutes concerning statements that are made in the witness's written statement before tendering the witness for cross-examination. The other side's cross-examination will not be limited to the scope of the direct, *i.e.* will not be limited to the statements which are the subject of that witness's written witness statement and shall not be subject to the 10-minute rule. The 10-minute rule will not apply to expert witnesses who may be examined, both on direct examination and on cross-examination, as to the opinions that they render.

(f) Memorials, Witness Statements and appended documents shall be served by electronic transmission to the extent reasonable based on the size of the appended documents. If electronic transmission of the appended documents is not reasonable, a USB or hard drive containing the appended documents shall be served via overnight courier. The Arbitrators shall also be served with the Memorials and the Witness Statements described in the paragraphs above. Service upon the Arbitrators may be made by email transmission with hard copies to follow. The parties will also supply a flash drive with each submission containing an electronic copy of the Memorial and Witness Statements.

7. Exchange of Documentary Exhibits.

Any exhibits upon which a party intends to rely at the Hearing, and which have not been previously identified in the written witness statements submitted by that party, shall be delivered to the other party on **October 3, 2016**. All documents, including rebuttal documents, must be submitted to the other side on that date. However, documents to be used exclusively for impeachment purposes may be withheld provided that such documents were not otherwise required to be disclosed in the course of the parties' document exchange.

8. Witness Issues.

By **September 28, 2016** each side will notify the other side and the Tribunal of any special considerations that may be requested or required with respect to any testifying witness. These may include any need for interpreters, any specific scheduling issues, or any applications for testimony to be proffered by video conferencing or other means.

9. Hearing Schedule.

The Hearings shall be conducted on consecutive days commencing on **October 10, 2016** and continuing on **October 11, 12, 13, and 14, 2016** if necessary Unless otherwise agreed by the parties, the hearings will take place in London, England at a

venue to be agreed and arranged for by the parties. The hearing hours generally shall be 9:30 a.m. to 5:00 p.m. but may be varied as necessary to accommodate counsel or witnesses. **The parties shall confer and advise the Tribunal of the place of the hearings on or before September 9, 2016.**

10. Hearing Exhibits.

Hearing exhibits shall be pre-marked with the Claimant using numbers commencing C-1, C-2, etc. and the Respondent using numbers commencing R-1, R-2, etc. A joint exhibit list shall be furnished to the Arbitrators. One set of exhibits shall be prepared for each Arbitrator and one set for the witnesses in addition to copies for counsel. All Arbitrator exhibits may be discarded 30 days after issuance of the award unless a party requests, in writing, that the exhibits be retained or returned. In addition, the parties are requested to provide a flash drive containing all exhibits, and to prepare a core bundle of exhibits that will include the contractual documents and a limited number of additional documents deemed critical to the dispute. The appearance or non-appearance of a document in the core bundle will have no effect upon the weight given to that document. The purpose of the core bundle is to alleviate the need for maneuvering bulky exhibit books at the Hearing.

11. Court Reporter.

The parties will arrange jointly for the services of a court reporter to attend the hearings. The Tribunal requests that it receive an expedited copy of the transcript and that the testimony be recorded in realtime on screens available at the hearings.

12. Award. The award shall be rendered in accordance with the Article 30 of the ICC Rules. Pursuant to Section 16.1(d) of the License Agreement, the Tribunal will use its best efforts to issue the Final Award within 20 days of the close of the hearing.

13. Post-Hearing Briefing.

The advisability or need for post-hearing briefing or argument will be discussed at the conclusion of the Hearing.

14. Miscellaneous.

(a) A prehearing conference call will be conducted with counsel and the Tribunal on **October 3, 2016** at 10:00 am Eastern time to discuss additional pre-hearing logistics. Such discussion will include such topics as whether opening statements are desired, the date for the parties' notification of the order of their witnesses, the date for the notification by a party of any demonstrative exhibits that it may wish to offer at the Hearing, the division of time and similar matters.

(b) All deadlines herein shall be strictly enforced. This Order shall continue

in effect unless and until amended by subsequent order of the Tribunal.

(c) Unless requested by a party, the Chairman may, at his discretion, decide scheduling and other non-contentious issues without prior consultation with the other panel members. All other matters, unless otherwise agreed by the parties, shall be decided by the full Tribunal.

(d) Copies of all correspondence shall be filed with the Secretariat. Exhibits for the Hearing shall be delivered to the Tribunal on the first day of the Hearing.

Dated:

Robert B. Davidson, President of the Tribunal

John McGoldrick

Hon. James Robertson (Ret.)