EXHIBIT 10.1  
  
  
  
  
  
  
  
  
  
 MANUFACTURING AGREEMENT  
  
 BETWEEN  
  
 REAADS MEDICAL PRODUCTS INC.  
  
 AND  
  
 CHUGAI PHARMACEUTICAL CO. , LTD.  
  
  
  
  
  
  
  
  
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This Agreement is entered into as of this First day of September, 1994, by and  
between REAADS Medical Products, Inc. , a corporation having a  
principal place of business at 00000 Xxxxx Xxxxxx, Xxxxx 000, Xxxxxxxxxxx,  
Xxxxxxxx 00000, XXX (hereinafter referred to as "RMP") and Chugai Pharmaceutical  
Co. , Ltd. , a corporation organized and existing under the laws of Japan,  
having a principal place of business at 0-0, Xxxxxxxx 0-Xxxxx, Xxxx-xx, Xxxxx  
000, Xxxxx (hereinafter referred to as "Chugai").  
  
 WITNESSETH  
  
WHEREAS, Chugai and RMP have entered the Development and Manufacturing  
Memorandum on 27th September 1993 to confirm both parties' intention of  
improving Chugai's diagnostic kit using RMP's technology and know-how;  
  
WHEREAS, Chugai proposed the Hyaluronic Acid assay from its product line to RMP  
as a candidate of such product to be improved, and RMFI conducted the  
development of the assay under a collaboration with Chugai;  
  
WHEREAS, Chugai is desirous of marketing such improved Hyaluronic Acid assay kit  
worldwide, and RMP is desirous of manufacturing it for export to Japan under the  
terms and conditions herein stipulated;  
  
NOW, THEREFORE, in consideration of the mutual covenants and agreements  
hereinafter contained, the parties hereto agree as follows:  
  
Article 1. Definition  
  
1.1 "Product" shall mean the Hyaluronic Acid assay developed by Chugai for  
 quantitation of hyaluronates in human sera, which is currently  
 manufactured and marketed in Japan by Chugai.  
  
1.2 "Developed Product" shall mean the improved version of Product which was  
 developed by RMP using RMP's Know-How (defined below, under the  
 Development and Manufacturing Memorandum.  
  
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1.3 "Patent Rights" shall mean any and all claims made by and all patent  
 applications and issued patents held by Chugai in the U.S.A. in  
 connection with the Product, including U.S. Patent No. 5,019,498 issued  
 on May, 28, 1991, and any and all divisions, continuations,  
 continuations-in-part, reissues or extensions thereof.  
  
1.4 "Know-How" shall mean the accumulation of skills, processes and  
 experience, including formulas and specifications, heretofore developed  
 by RMP pertaining to the REAADS enzyme immunoassay technology,  
 including, but not limited to, any and all technical information, trade  
 secrets, test results, studies and analysis, approved vendor list for  
 any raw materials, preclinical and clinical data, manufacturing data,  
 formulation or production technology, engineering or assembly methods  
 and other information necessary or useful in the manufacture, sale and  
 use of the Developed Product.  
  
1.5 "Affiliate" shall mean and include any individual, corporation,  
 partnership, limited liability company, joint venture business  
 association or entity that controls, is controlled by, or is under  
 common control with the specified party. For purposes of this  
 definition, "control" shall mean direct or indirect beneficial ownership  
 of more than fifty percent (50%) of the voting stock or other equity  
 ownership interest of, and fifty percent (50%) or more interest in the  
 income of, such entity.  
  
1.6 "Effective Date" shall mean the date as set forth on the first page  
 hereof, upon which this Agreement shall become effective.  
  
1.7 "Launch Date" shall mean the date upon which the Developed Product is  
 approved for commercial use in Japan by the Ministry of Health and  
 Welfare and is officially put into commercial distribution in Japan.  
  
1.8 "Net Sales" shall mean the total invoice or contract price charged by  
 Chugai or its Affiliates to third parties for the sale of the  
  
  
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 Developed Product, less returns, freight charges, insurance premium and  
 customary trade discounts actually taken, consumption tax or other taxes  
 levied and customs duties.  
  
Article 2. Development Fee  
  
Chugai shall compensate RMP pursuant to Article 6.3 hereof in the amount of One  
Hundred Fifty Thousand Dollars ($150,000) in full payment for the costs incurred  
by RMP in the development of the Developed Product.  
  
Article 3. License to RMP  
  
Subject to the terms and conditions hereinafter set forth, Chugai hereby grants  
to RMP a license under the Patent Rights to manufacture the Developed Product  
solely for export to Chugai. Such license shall be an exclusive license for ,  
period of three (3) years commencing on the Launch Date (the "Three-Year  
Period") and shall automatically convert at the end of the Three-Year Period to  
a non-exclusive license for the balance of the term of this Agreement; provided,  
however, that Chugai may also convert the exclusive license to a non-exclusive  
license at any time during the Three-Year Period upon written notice to RMP.  
  
Upon conversion of the exclusive license granted to RMP into a nonexclusive  
license, Chugai shall have the rights, pursuant to the license granted to it by  
RMP under Article 4 hereof, to manufacture the Developed Product in its  
facilities or to have the Developed Product manufactured by any other party.  
Chugai shall pay a royalty to RMP in respect of such license equal to three  
percent (3%) of its Net Sales of the Developed Product manufactured by a party  
other than RMP during the term of this Agreement. In addition, if Chugai elects  
to convert the license to a nonexclusive license prior to the end of the  
Three-Year Period, Chugai shall pay to RMP, in addition to such three percent  
(3%) royalty, a transfer  
  
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fee equal to two percent (2%) of its Net Sales during the Three-Year Period of  
the Developed Product manufactured by a party other than RMP, such transfer fee  
being intended to compensate RMP for profits that RMP would have realized  
through the manufacture of such Developed Product during the entire Three-Year  
Period.  
  
Article 4. License to Chugai  
  
Subject to the terms and conditions set forth in Article 3 above, RMP hereby  
grants to Chugai an exclusive, perpetual, transferable right and license under  
the Know-How to make, use, sell and distribute the Developed Product worldwide  
including the right to sublicense.  
  
Article 5. Bulk Material  
  
The bulk materials to be incorporated into the Developed Product may be provided  
by Chugai, or be procured by RMP itself if both parties desire so.  
  
Article 6. Purchase and Delivery  
  
6.1 Purchase Orders  
  
All purchase orders and amendments thereto shall be in writing and shall contain  
(i) all technical information necessary for RMP to accurately supply the  
Developed Product, (ii) quantity, (iii) date of requested delivery, and (iv)  
preferred shipping instructions. All such purchase orders shall be deemed  
accepted by RMP unless, within one (1) week following receipt of the purchase  
order, RMP gives written notice to Chugai of non-acceptance thereof stating the  
reasons therefor. Acceptance of purchase orders complying with the terms of this  
Agreement may not be withheld by RMP.  
  
6.2 Supply Price  
  
The supply price per kit at which RMP shall sell the Developed Product to Chugai  
hereunder ( "Supply Price") shall be negotiated in good faith  
  
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between the parties in view of RMP's cost, Chugai's pricing at the retail level  
in Japan and other market conditions. All purchase orders shall be fulfilled at  
the Supply Price that is in effect on the date of receipt of the purchase order  
by RMP.  
  
The Supply Price shall initially be set by the parties prior to the Launch Date  
and shall be adjusted as necessary before December 1 each year, beginning with  
the first December 1 following the Launch Date. Such adjusted Supply Price shall  
be applied effective January 1 throughout the next calendar year. No adjustment  
to the Supply Price shall reflect an increase greater than the rate of increase  
in the United States Consumer Price Index - All Urban Consumers, published by  
the United States Department of Commerce since the date of the previous  
adjustment. The Supply Price shall not exceed twenty-two percent (22%) of  
Chugai's retail price in Japan for the Developed Product nor be less than RMP's  
fully burdened manufacturing cost plus forty percent (40%).  
  
Should the parties be unable to agree on adjustment of the Supply Price for any  
calendar year by December 1 of the prior year, the Supply Price for such prior  
year shall continue in effect for the first six (6) months of such following  
calendar year. Should the parties remain unable to agree on adjustment of the  
Supply Price by June 1, the Supply Price for the last six (6) months of such  
year shall be determined by a mutually agreeable conciliator at a mutually  
agreeable place.  
  
6.3 Compensation  
  
Notwithstanding the foregoing provisions of this Article 6, in order for RMP to  
recover its costs associated with the development of the Developed Product in  
accordance with Article 2 hereof, Chugai shall purchase the first ten thousand  
(10,000) kits supplied by RMP hereunder at a price per kit equal to the Supply  
Price then in effect, as determined pursuant to Article 6.2 hereof, plus Fifteen  
Dollars ($15) per kit. If Chugai should elect to utilize a manufacturer for the  
Developed Product other than RMP prior to purchasing ten thousand C10,000) kits  
from RMP hereunder, Chugai shall satisfy its obligation to RMP in respect of  
such development costs by making a lump-sum payment to RMP equal to One Hundred  
Fifty Thousand  
  
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Dollars ($150,000) less the aggregate number of kits purchased from RMP times  
Fifteen Dollars ($15).  
  
6.4 Invoices  
  
RMP shall invoice Chugai at its address set forth in Article 17.3 below at the  
time of each shipment of the Developed Product. Invoices shall not be issued  
prior to shipment of all items covered by the invoice. Invoices shall contain  
the purchase order number, description of items purchased, price, freight  
charges and total. Payment shall be made by Chugai to RMP in US dollars.  
  
6.5 Delivery  
  
RMP shall deliver the Developed Product in accordance with Chugai's shipping  
instructions within thirty (30) days following RMP's receipt of Chugai's  
purchase order; provided that if the order exceeds by more than 10% the  
corresponding six month forecast as provided in Article 6.6, RMP shall have  
forty-five (45) days to deliver the requested Developed Product. All the  
Developed Product shall be delivered to Chugai in finished and packaged form,  
C&F Tokyo International Airport, to the address specified in the applicable  
purchase order. RMP shall be responsible for boxing, crating, handling, storage  
and all other packaging requirements prior to shipment. Risk of loss shall pass  
when the Developed Product are delivered to the carrier in accord with the  
Chugai's shipping instructions, and delivery to Chugai shall be considered to  
occur at such time. All the Developed Product shall be packed, marked and  
otherwise prepared for shipment in a manner which is in accordance with good  
commercial practice and adequate to ensure the safe arrival of the Developed  
Product.  
  
  
  
  
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If RMP wants to change the scheduled delivery date or the quantity to deliver  
which RMP accepted in accordance with the Article 6.1, RMP shall notify Chugai  
of the change in writing at least seven (7) days prior to the delivery date  
originally scheduled. If, for any reason, other than as expressly provided for  
in this Agreement, RMP fails to despatch, without prior notice to Chugai as set  
forth hereinabove, all quantities of the Developed Product which Chugai ordered  
within five (5) business days after the delivery date originally scheduled, RMP  
agrees to pay to Chugai ten percent (10%) of total invoice amount of the order  
placed by Chugai.  
  
6.6 Forecasts  
  
Every six (6) months during the term of this Agreement, on or before May 31 and  
November 30 of each year, Chugai shall submit to RMP a non-binding forecast of  
its estimated requirements of the Developed Product for the corresponding six  
(6) month period commencing on the following July 1 and January 1, respectively.  
Chugai agrees that all such forecasts shall be prepared in good faith in order  
to facilitate RMP's timely manufacture and shipment of the Developed Product in  
accordance with the terms and conditions of this Agreement.  
  
6.7 Rejection  
  
All Developed Product shall be subject to inspection and acceptance by Chugai.  
In the event that Chugai believes that any of the Developed Product shipped by  
RMP to Chugai hereunder do not meet the quality standards and specifications to  
be mutually agreed separately in advance of the Launch Date, Chugai shall have  
the right to reject such shipment by giving RMP prompt notice thereof. Upon  
receipt of any such notice, RMP may at its option obtain samples of the rejected  
shipment from Chugai for analysis. At Chugai's option, Chugai may either request  
RMP to promptly deliver a new shipment of the Developed Product to replace the  
rejected shipment or return the rejected shipment to RMP so that RMP may cure  
all defects and deficiencies and deliver the corrected shipment to Chugai within  
thirty (30) days after RMP's receipt of such returned shipment. In either event,  
RMP shall bear all freight costs in the delivery of the Developed Product  
between Chugai and RMP.  
  
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6.8 Quality Assurance  
  
RMP shall strictly adhere to such quality control procedures as may be necessary  
to ensure that the Developed Product will be manufactured and perform in  
accordance with Chugai's specifications and as may be otherwise necessary to  
meet all applicable governmental specifications and requirements for the  
manufacture of the Developed Product. RMP shall certify to Chugai with respect  
to each such shipment that all such procedures and specifications have been met  
and complied with, and shall furnish Chugai with copies of the test results and  
other definitive data supporting its certification if requested in writing.  
  
6.9 Labeling and Trademarks  
  
The Developed Product, including labels, packaging and product inserts, shall  
bear such trade names, trademarks, designs and logos as may be designated and  
supplied by Chugai, subject to the requirements of applicable law.  
  
6.10 Product Warranty  
  
All the Developed Products furnished by RMP to Chugai hereunder shall be  
warranted (i) to be manufactured in accordance with applicable product  
specifications; (ii) to be manufactured in accordance with good manufacturing  
practices as defined by FDA regulations; (iii) to be free from defects in  
formulation and manufacture under the normal use and service for which they were  
designed; (iv) to be suitable for sale to the public in accordance with the  
terms of the Developed Product's labels and inserts; and (v) as to RMP's good  
title and conveyance of good title to Chugai; provided, that the foregoing  
warranty of good title shall not extend to the defect derived from the Chugai  
technology incorporated ir the Developed Product. Such warranties shall run to  
Chugai, and its Affiliates, successors, assigns and users of the Developed  
Product and shall expressly survive any inspection, delivery, acceptance,  
payment, expiration or earlier termination of this Agreement. The warranties of  
RMP set forth in this Article 6.10 are the sole and exclusive warranties  
provided to Chugai, its successors, assigns and users of the Developed   
  
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Product, and are in lieu of all other warranties, whether written or oral,  
implied or statutory. RMP shall not be liable to Chugai for any loss of profits  
or other special, indirect or consequential damages suffered by Chugai resulting  
from the failure of or a defect in any Developed Product, provided, however,  
that no such limitation shall apply with respect to any such damages suffered by  
unaffiliated third parties. All the Developed Product labels and product inserts  
shall appropriately reflect the product warranties, and limitations thereof,  
provided by this Article 6.10. RMP shall not be responsible to Chugai or  
Chugai's agents for any breach of warranty hereunder which results solely from  
Chugai's willful misconduct or negligence in handling of the Developed Product,  
to the extent RMP has theretofore fully disclosed to Chugai the appropriate way  
of handling the Developed Product when particular cautions are required in  
connection therewith.  
  
6.11 Compliance with Law  
  
RMP shall take all necessary action to comply with all applicable FDA  
regulations and other U.S. legal requirements in connection with the manufacture  
of the Developed Product. Such obligations shall include, without limitation,  
complying with all applicable good manufacturing practices and good laboratory  
practices as promulgated under applicable U.S. law, and all other applicable  
U.S. federal, state or local low or regulations. Chugai shall have the right  
upon reasonable notice to RMP to inspect RMP's manufacturing facilities and  
operations and quality control records to review and inspect the manufacture of  
the Developed Product, to audit and confirm compliance with the requirements of  
this Article 6.11 and to trace production in connection with any recall, product  
liability or other problems related to the manufacture. Any such inspection or  
right to inspect by Chugai shall in no way relieve RMP of its obligation to  
deliver the Developed Product conforming to the terms and specifications set  
forth in this Agreement, or Chugai's right to inspect and reject the Developed  
Product.  
  
Article 7. Royalty Payments  
  
If any royalty or transfer fee payments shall become payable from Chugai   
  
  
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to RMP pursuant to Article 3 hereof , Chugai shall remit such payments to RMP,  
within ninety (90) days after the close of the calendar quarter to which such  
payments relate together with a report of the amount of the Net Sales of the  
Developed Product sold by Chugai and its Affiliates, and the amount of royalty  
and transfer fee payments due to RMP.  
  
Chugai shall make all payments in the United States Dollars after deduction of  
any applicable withholding tax. All amounts due on the Net Sales made in  
Japanese Yen shall be converted to United States Dollars on the basis of the  
T.T. Selling rate at the Sumitomo Bank in Tokyo on the last business day of the  
period for which such payment relates.  
  
Article 8. Assignment  
  
Neither party shall assign this Agreement without the prior written consent of  
the other party hereto, except to (i) an Affiliate of such party, (ii) a  
transferee of substantially the entire business of such party to which this  
Agreement pertains or (iii) a successor to such party by merger or  
consolidation. Any assignee shall assume all obligations of its assignor under  
this Agreement. No assignment shall relieve any party of responsibility for the  
performance of any accrued obligation which such party then has hereunder. This  
Agreement shall be binding on and inure to the benefit of the respective  
successors and permitted assigns of the parties. Except as expressly provided  
herein, no other person shall acquire or have any right under or by virtue of  
this Agreement.  
  
Article 9. Confidentiality Requirement  
  
Each party acknowledges that during the course of this Agreement it will become  
privy to confidential information of the other party including technology,  
business strategy, and other technical, business and financial matters. Each  
party further acknowledges that the disclosure of such information to a third  
party, or the use of such information for purposes other than the purposes of  
this Agreement, would cause irreparable injury to the other party, which injury  
might not be compensated for adequately by money damages. Each party accordingly  
agrees during the term of this agreement to hold all information provided   
  
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by the other party in strictest confidence and not to disclose any such  
information to a third party except as expressly permitted by the other party,  
or use such information for any purpose other than the purposes hereof. This  
Article shall survive any termination of this Agreement for a period of three  
(3) years.  
  
As used herein, the term "confidential information" shall not include  
information that (i) is or becomes generally available to the public other than  
as a result of disclosure by receiving party, (ii) was available to receiving  
party on a nonconfidential basis prior to its disclosure by disclosing party or  
(iii) becomes available to receiving party on a nonconfidential basis from a  
source other than disclosing party that is not otherwise prohibited from  
disclosing such information.  
  
Article 10. Regulatory Matters  
  
10.1 Export/Import Licenses  
  
RMP shall be responsible for obtaining all export licenses or permits required  
by the U.S. government for any of the Developed Product and will use its  
reasonable business effort to obtain such licenses as expeditiously as possible,  
as well as the cost of such licenses and permits. Chugai shall be responsible  
for obtaining all licenses and permits required by any governmental authority in  
order to import the Developed Product into Japan, as well as the cost of such  
licenses and permits. Each party agrees to comply with all applicable laws,  
regulations and orders governing the sale, disposition, shipment, import or  
export of the Developed Product and maintain in effect all licenses, permits and  
authorizations from all government agencies as may be necessary to perform its  
obligations hereunder.  
  
10.2 Regulatory Approvals  
  
Chugai shall be responsible for, and shall bear the expense of, filing and  
prosecuting any application to obtain the required governmental approvals or  
consents necessary to manufacture, test and market the Developed Product in  
Japan, RMP shall, however, provide Chugai, at no   
  
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cost to Chugai, with all technical and regulatory documentation and information,  
including, without limitation, all clinical data, in RMP's possession or under  
its control, or obtainable without unreasonable burden to RMP.  
  
Article 11. Technical Support  
  
RMP shall provide training and technical assistance to Chugai's personnel  
necessary for the marketing of the Developed Product. Such technical assistance  
and training shall be provided at RMP's facility in Westminster, Colorado, or,  
if agreed by the parties, at Chugai's premises. Such technical assistance and  
training shall be provided by RMP at no charge to Chugai, except that if the  
training is performed at Chugai's premises, Chugai shall reimburse RMP for the  
reasonable expenses of RMP's personnel for travel, meals, and lodging upon  
submission of documentary evidence thereof. If training is provided at RMP's  
facility in Westminster, Colorado, Chugai shall bear all expenses of travel,  
meals and lodging for its personnel. All technical assistance and training shall  
be performed at times convenient to both parties.  
  
Article 12. Infringement  
  
In the event any claim is brought against RMP or Chugai by any third party  
alleging infringement of the third party's patents or other property right for  
manufacture, use, or sale of the Developed Product, (a) Chugai will cooperate  
with RMP at RMP's cost as reasonably requested by RMP in defense of any such  
claims brought against RMP, and (b) RMP will cooperate with Chugai at RMP's cost  
in defense of any such claims brought against Chugai.  
  
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Notwithstanding the foregoing, Chugai shall be solely liable for any claim of  
infringement involving the Developed Product, which is based solely on Chugai  
technology included in the Developed Product, and shall indemnify, defend and  
hold harmless RMP from any liability resulting from such claim including  
reasonable attorney's fees as incurred, and RMP shall be solely liable for any  
claim of infringement involving the Developed Product, which is based solely on  
RMP's Know-How, and shall indemnify, defend and hold harmless Chugai from any  
liability resulting from such claim including reasonable attorney's fees as  
incurred.  
  
Article 13. Shelf Life; Cancellation and Reschedule Changes  
  
13.1 Shelf Life Warranty  
  
RMP warrants that the Developed Product shall have a shelf life, at the time of  
receipt by Chugai, of at least eighty percent (80%) of the shelf life stated on  
the label or product insert. RMP shall not be liable for any failure to satisfy  
the shelf life requirement to the extent such variance is caused by conditions  
or events occurring after shipment over which RMP has no control.  
  
13.2 Notices  
  
Should Chugai discover any Developed Product which fails to satisfy the shelf  
life warranties contained in Article 13.1, Chugai shall notify RMP in writing  
within fifteen (15) business days after such discovery. RMP shall, at Chugai's  
election, either refund the portion of the purchase price to Chugai, allocable  
to the Developed Product which gives rise to the claim, or correct such defect  
by suitable replacement at its own expense. RMP's obligation under this section  
shall be conclusively discharged, to the extent permitted under applicable laws,  
if RMP does not receive written notification of any defect within fifteen (15)  
business days after its discovery.  
  
13.3 Third Party Claims  
  
The provisions of these Articles 13.1 and 13.2 are not applicable to any   
  
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third party claims.  
  
13.4 Cancellation and Reschedule Charges  
  
If, for any reason, other than as expressly provided for in this Agreement,  
Chugai (i) cancels all or any part of any order, or (ii) fails to meet any  
obligation hereunder, causing cancellation or rescheduling of any order or  
portion thereof, or (iii) requests a rescheduling of scheduled shipments of the  
Developed Product, and the request is accepted by RMP, Chugai agrees to pay to  
RMP the following cancellation/reschedule charges:  
  
  
CANCELLATION OR RESCHEDULE NOTICE CANCELLATION OR RESCHEDULE  
RECEIVED CHARGE  
  
  
Within 7 days after the date of 20% of invoice amount of the Developed  
placing purchase order by Chugai Product not taken  
  
Thereafter up to scheduled delivery 30% of invoice amount of the  
 Developed Product not taken  
  
  
The aforementioned charges shall not apply in case that the events described in  
the first paragraph of this Article 13.4 are due to events of force majeure as  
defined in Article 17.7.  
  
Article 14. Term  
  
Unless earlier terminated by either party, this Agreement shall be effective for  
seven (7) years from the Effective Date, and shall be automatically renewed  
after the initial term for successive one (l)-year period each unless terminated  
by either party as provided in Article 15 hereof.  
  
Article 15. Termination  
  
Either party will have the right to terminate this Agreement if the other   
  
  
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party; (a) assigns this Agreement or any of these rights hereunder in violation  
of the provisions of this Agreement; (b) becomes bankrupt or insolvent; (c)  
makes an assignment for the benefit of creditors, or a receiver, trustee in  
bankruptcy or similar officer is appointed to take charge of all or part of its  
property; or (d) materially breaches its obligations under this Agreement, and  
such breach has not been cured within thirty (30) days of written notice thereof  
by the non-breaching party. In addition, each party will have the right to  
terminate this Agreement at the end of the initial term and of each subsequent  
term as provided for in Article 14 above upon six (6) months prior written  
notice. The provisions of Articles 4, 6.10, 9, 12, 13.1 and 16 hereof, and the  
obligations of the parties to make payments to each other pursuant to any other  
provision of this Agreement in respect of transactions accruing prior to the  
termination date, shall survive the termination of this Agreement.  
  
Article 16. Arbitration  
  
Any controversy or claim arising under or in relation to this Agreement, except  
as otherwise expressly provided below, shall be settled exclusively by  
arbitration in accordance with the Intentional Arbitration Rules of the  
International Chamber of Commerce (ICC). Arbitration shall take place in Paris,  
France. The arbitration shall be conducted in English. The cost incurred by the  
arbitration shall be borne equally by the parties except for each attorneys'  
fees which shall be borne by each party. The decision of the arbitrators shall  
be final and binding on the parties, and judgment upon the award rendered by the  
arbitrators may be entered by any court having jurisdiction thereof.  
  
Article 17. General Provisions  
  
17.1 Entire Agreement  
  
This Agreement constitutes the entire agreement between the parties with respect  
to the subject matter hereof, and may not be modified unless expressly provided  
otherwise herein except by a written agreement or addendum hereto duly signed by  
both parties. The terms and conditions of   
  
  
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this Agreement shall prevail notwithstanding any other terms and conditions on  
any order submitted by Chugai.  
  
17.2 Waiver, Etc,  
  
Except where specific time limits are herein provided, no delay on the part of  
either party hereto in exercising any power or right hereunder shall operate as  
a waiver thereof, nor shall any single or partial exercise of any power or right  
hereunder preclude other or urt er exercise thereof or the exercise of any other  
power or right. No waiver, modification or amendment of this Agreement or any  
provision hereof shall be enforceable against any party hereto unless in  
writing, signed by the party against whom such waiver, modification or amendment  
is claimed, and with regard to any waiver, shall be limited solely to the one  
event.  
  
17.3 Notices  
  
Any notices or report required or permitted under this Agreement must be in  
writing and by mail, registered or certified, postage prepaid addressed to the  
other party at address set forth hereinbelow, or to such other address as  
designated by written notice given to the other party:  
  
If to RMP: If to Chugai:  
  
Xx. Xxxx X. Xxxxx General Manager  
President Diagnostics Division  
REAADS Medical Products, Inc. Chugai Pharmaceutical Co., Ltd.  
00000 Xxxxx Xxxxxx, Xxxxx 000 21-1, Nishi-Shinjuku I-Chome  
Xxxxxxxxxxx, Xxxxxxxx 00000 Shinjuku-ku, Tokyo 160  
U.S.A. Japan  
  
17.4 Governing Law  
  
The validity and interpretation of this Agreement shall be governed and  
construed according to the laws of the State of , U.S.A.  
  
17.5 Relationship Created  
  
The parties intend that the relationship between them created by this   
  
  
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Agreement be that of independent contractors, and nothing in this Agreement  
shall be construed as establishing an agency relationship, a joint venture or a  
partnership between the parties.  
  
17.6 Authority  
  
Each party hereby represents and warrants that it has full power and authority  
to enter into and perform this Agreement, without any governmental approvals,  
and that its entering into and performance of this Agreement will not conflict  
with any other agreement to which it is party or by which it is bound.  
  
17.7 Force Majeure  
  
Each party shall be relieved of its obligations under this Agreement to the  
extent, and only to the extent, that fulfillment of such obligations shall be  
prevented by acts of war, labor difficulties, riots, fire, earthquake, flood,  
hurricane, windstorm, acts or defaults of common carrier, governmental laws,  
acts or regulations, shortages of materials or any other occurrences, whether or  
not similar to the foregoing, beyond the reasonable control of the affected  
party.  
  
17.8 Headings  
  
The headings of Articles and Sections herein are for convenience of reference  
only and shall not affect the meaning or construction of the provisions of this  
Agreement.  
  
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IN CONSIDERATION OF the foregoing terms and conditions, Chugai and RMP have  
executed this Agreement on the day and year first written above.  
  
REAADS Medical Products, Inc. Chugai Pharmaceutical Co., Ltd.  
  
  
By /s/ Xxxx X. Xxxxx By /s/ Xxxx Xxxx  
 ------------------------------- ----------------------------------  
 Xxxx X. Xxxxx Xxxx Xxxx  
 President Director and General Manager  
 Diagnostic Division  
  
  
  
  
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