T1710-C

THE 12th LAW ASIA INTERNATIONAL MOOT COURT COMPETITION

AT THE JAPAN REGIONAL CENTRE FOR ARBITRATION

2017

CASE CONCERNING PARTNERSHIP AGREEMENT

BETWEEN

ASAMURA INTERNATIONAL DEVELOPMENT CO., LTD.

(CLAIMANT)

AND

SHWE PWINT THONE CO., LTD.

(RESPONDENT)

MEMORIAL FOR THE CLAIMANT

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STATEMENT OF JURISDICTION

The parties, Asamura International Development Co., Ltd. ("AID") and Shwe Pwint Thone Co., Ltd ("SPT"), have agreed to submit the present dispute to arbitration in accordance with the Kuala Lumpur Regional Centre for Arbitration i-Arbitration Rules ("KLRCA i-Arbitration Rules")

QUESTIONS PRESENTED

I. The validity of the termination of the agreement by SPT.

II. The ownership of the jade-mining machinery and equipment.

III. Subsistence and ownership of rights in the JADEYE software.

STATEMENT OF FACTS

1. Asamura International Development Co., Ltd. (“CLAIMANT”) is founded in 1958 in Tokyo, Japan.

2. Shwe Pwint Thone Co., Ltd. (“RESPONDENT”) is a local Myanmar Company.

3. The junta gifted SPT 80 acres of land in Hpakant, where the piece of land was believed to contain a huge amount of jade deposits.

4. Dr. Yugi Asamura (“Dr. Asamura”) who is the leader of CLAIMANT and U Thein Kyaw (“Mr. Kyaw”) who is the owner of SPT decided to enter into a partnership of the jade mining business in Myanmar on 9 September 2008.

5. Both parties concluded the agreement (“the Agreement”) as the partnership agreement of the venture business.

6. Under Article 4 of the Agreement, CLAIMANT will buy and provide all equipment required, and provide technical expertise for the term of the agreement.

CLAIMANT sourced for second hand machinery and equipment from Japan, purchased them, and reconditioned them.

7. RESPONDENT imported the jade-mining machinery and equipment into Myanmar in January 2009.

8. Under Article 6 of the Agreement, the jade mining business is divided into four parts: extract the jade, cutting the jade, process the jade, and then sell the jade. Based on both sides' expertise, the control of the activities will be split. For extracting and cutting CLAIMANT will take charge and give the direction and instructions. For processing and selling, RESPONDENT will play the main role.

9. Following the Agreement, CLAIMANT's employees operated some of the equipment, took charge of geological surveys and strategic prospecting, while imparting technical knowledge to RESPONDENT's employees and students.

10. Under Article 3 of the Agreement, RESPONDENT is in charge of obtaining and settling all the permits and requirements to do the jade-mining business and all

related matters with the government of Myanmar.

11. RESPONDENT obtained the necessary jade mining and equipment permit from the government to ensure the smooth flow of works at the jade field. The granted permit was due to expire on 31 March 2019.

12. Joe Yamashita (“Mr. Yamashita”) who was one of CLAIMANT’s finance executives created the JADEYE software on 11 April 2012.

13. When the JADEYE software operated, Mr. Kyaw pleased its result.

14. Joe Yamashita declined USD 18,000 in cash from Mr. Yamashita and he said that JADEYE was “for the benefit of all of us”.

15. On 4 January 2013, Mr. Yamashita resigned from AID. He handed the source code of the JADEYE software to Head of Finance of AID in Tokyo on his last day.

16. Dr. Yugi Asamura and Dr. Fiona Lum (“Dr. Fiona”) who is a wife of Dr. Asamura

were chosen as “Asia’s Top 20 Power Couples” on the Asian Influencers Magazine for its 2016 edition.

17. Dr. Fiona answered about the Rohingyas, “They should not be deprived of their basic human rights. We will continue to champion for their rights”.

18. On September 2016, many of SPT’s employees and students were very upset by Dr. Fiona’s statement as it implied that the government was involved in ethnic cleansing. 102 of SPT’s workers went on strike for seven days, requesting Dr. Fiona Lum and Dr. Yugi Asamura to issue an apology and to retract the statement.

19. Yuri Hashimoto (“Ms. Hashimato”), decided to engage Dr. Asamura’s assistance to source for jades from Hpakant, as her company, Hashimoto Co., Ltd (“HCL”) had won a contract to produce official jadeite souvenirs and merchandise for the Tokyo Olympics in 2020.

20. Before CLAIMANT concluded the contract with HCL on 1 November 2016, Dr. Asamura discussed with Mr. Kyaw, who then told him to proceed with the

engagement via CLAIMANT and not let go of such a business opportunity.

21. U Soe Myint (“Ms. Myint”) who is one of Ms. Kyaw closest confidantes in CLAIMANT, strongly recommended to end the partnership with CLAIMANT to save RESPONDENT.

22. On 10 January 2017, Dr. Kyaw made up his mind to end the partnership between CLAIMANT and RESPONDENT.

23. Dr. Asamura protested that RESPONDENT had no right to terminate the agreement and that even in the event of a termination, RESPONDENT has to compensate CLAIMANT more than just on the relocation costs.

24. Ms. Kyaw said that RESONDENT held the title to all machinery and equipment since they were the ones who imported them into Myanmar, and have obtained the government permits required to operate them. Moreover, RESPONDENT was recorded as the owner and operator of them on those permits.

25. Mr. Kyaw informed that RESPONDENT will reverse engineer or create their own version of JADEYE.

Summary of Pleadings

Issue (i): The validity of the termination of the agreement by SPT

1. CLAIMANT respectfully requests the tribunal to find that the termination of the Agreement by RESPONDENT is not valid. This is because; RESPONDENT has not fulfilled any of the conditions of termination under the law of Golden Land of Myanmar. To start with, under Myanmar law, the Partnership Act of 1932 (hereinafter 'Partnership Act') and the Contract Act of 1872 (hereinafter 'Contract Act') have provisions concerning of conditions of the termination of an agreement. According to the Partnership Act the Contract Act, conditions of the termination of an agreement can be summarized to three conditions for this case as following;

2. First, an agreement may be terminated if an agreement is constituted for a fixed term and the term has expired under Article 42 (a) of the Partnership Act. For this case, the Agreement has been constituted for a fixed term, which is until 31 March 2019. Thus, the termination by RESPONDENT is not valid.

3. Second, an agreement may be terminated if an agreement is constituted to carry out an adventure, and the adventure has completed under Article 42 (b) of the Partnership Act. For this case, the adventure was to develop the jade-business in Hpakant. However, this purpose is not yet completed due to the fact that both parties agreed to expect the business until 31 March 2019, and at least November 2017, which is the fixed term of the contract with HCL.

4. Thirdly, an agreement may be terminated if there is a breach of the Agreement under Article 39 of the Contract Act. However, for this case, there was no breach of the Agreement by CLAIMANT.

5. None of the conditions to terminate the Agreement under Myanmar law is satisfied for this case. Therefore, the termination of the Agreement by RESPONDENT is not valid.

Issue (ii): The ownership of the jade-mining machinery and equipment

6. The ownership of the jade-mining machinery and equipment is solely owned by CLAIMANT. CLAIMANT had bought the jade-mining machinery and equipment in Japan and has been lending them to the partnership. Registration of them by RESPONDENT was for the sake of convenience and this does not constitute as the fact or article that proves RESPONDENT has the ownership of them. Therefore, the ownership of the jade-mining machinery and equipment is owned by CLAIMANT.

Issue (iii): Subsistence and ownership of rights in the JADEYE software

7. The ownership of rights in the JADEYE software is owned solely by CLAIMANT and RESPONDENT is not allowed to make reverse engineer or create their own version of JADEYE. It is both parties' understanding that the JADEYE software is solely owned by CLAIMANT because of the inventor of the JADEYE software, Joe Yamashita, is CLAIMANT's employee and he was paid by CLAIMANT. The JADEYE software was invented as a part of his work in CLAIMANT. Moreover, the JADEYE software was for the related work of CLAIMANT in Myanmar. Therefore, the ownership of rights in the JADEYE software is owned by CLAIMANT.

Pleadings

Issue (i): The validity of the termination of the agreement by SPT

Termination of The Agreement By RESPONDENT Is Not Valid

Summary of CLAIMANT's claim

1. CLAIMANT respectfully requests the Tribunal to find that the termination of the Agreement, which was entered by CLAIMANT and RESPONDENT on 9 September 2008, by RESPONDENT is not valid.

A. Myanmar Law is Applied to the Issue

2. As stipulated in Article 10 of the Agreement, CLAIMANT and RESPONDENT have agreed that the governing law of the Agreement is the law of the Golden Land of Myanmar. Therefore, the validity of the termination of the Agreement should be determined under the laws of Myanmar. As explained in the following paragraphs, in Myanmar, the Partnership Act 1932 (the "Partnership Act") and the Contract Act

1872 contain provisions concerning conditions under which a partnership agreement may be terminated.

A-1. The Partnership Act is Applied to the Issue

3. The Partnership Act is applied to this case because the Agreement is considered as a partnership to which the Partnership Act shall be applied. The Article 4 of the Partnership Act stipulates, '"Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into the partnership with one another are called individually "partners" and collectively "a firm"'.[1]

4. In this case, Article 4 of the Agreement stipulates, 'We decide to become business partners for the jade business in Hpakant, Kachin state'. In addition, Article 7 of the Agreement stipulates, 'All the profits from the jade business will be shared: 65% goes to SPT and 35% goes to AID'. These articles of the Agreement clearly show that CLAIMANT and RESPONDENT have agreed to share the profit by the jade business, and have entered into a partnership agreement as defined in the Partnership Act. Therefore, the Partnership Act shall be applied to solve this issue.

[1] This English translation of the Partnership Act is available at http://www.burmalibrary.org/docs16/Burma_Code-Vol-IX.pdf.

A-2. Conditions to Terminate a Partnership Agreement under Article 42 of the Partnership Act

5. Regarding the termination of a partnership agreement, Article 42 of the Partnership Act stipulates, 'Subject to contract between the partners, a firm is dissolved (a) if constituted for a fixed term, by the expiry of that term; (b) if constituted to carry out one or more adventures or undertakings, by the completion thereof; (c) by the death of a partner; and (d) by the adjudication of a partner as an insolvent."

6. First, it should be pointed out that there is no provision regarding the termination of the Agreement. Also, it is clear that the condition of (c) and (d) is irrelevant in this case. Thus, for the termination by RESPONDENT to be valid under Article 42 of the Partnership Act, either (a) or (b) need to be satisfied.

7. For the avoidance of doubt, it should be mentioned that Article 43 of the Partnership Act stipulates, "Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm". However, as explained in detail in paragraph, the

Agreement has a fixed term or at least the partnership has been constituted for "adventure", and the Agreement is not at will. Therefore, Article 43 should be applied to this issue.

A-3. Conditions Of A Termination Under The Contract Act Shall Be Applied

8. In addition to the Partnership Act, the Contract Act has a provision that might allow a party to terminate a contract. According to Article 39 of the Contract Act; 'When a party to a contract has refused to perform or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance'[2]. Therefore, under the Contract Act, if there is a breach of contract by one party, the other party may terminate the contract as a matter of remedy.[3]

[2] This English translation of the Contract Act is available at http://www.burmalibrary.org/docs16/Burma_Code-Vol-IX.pdf.
[3] Adrian Briggs and Andrew Burrows, THE LAW OF CONTRACT IN MYANMAR (Oxford University, 2017), at 170.

A-4. One of the Conditions for Termination of a Partnership Agreement under the Partnership Act and Contract Act Have must be met

9. As a conclusion, under Myanmar law, the termination of the Agreement is only possible when, (I) if a partnership is constituted for a fixed term and that term has expired (Article 42 (a) of the Partnership Act), (II) if a partnership constituted to carry out one or more adventures or undertakings, and the adventures or undertakings are completed, (Article 42 (b) of the Partnership Act), or (III) when a party to contract has refused or failed to perform its promise (Article 39 of the Contract Act). However, as following paragraphs prove, none of these conditions are met and the termination of the Agreement by RESPONDENT is not valid.

B. Article 42 (a) of the Partnership Act: The term of the Agreement Has Not Yet Expired

10. Under Article 42 (a) of the Partnership Act, a partnership agreement may be terminated if the term of the agreement has expired. However, in this case, the term of the Agreement continues until 31 March 2019 and has not yet expired.

B-1. The Term of The Agreement Continues, until 31 March 2019

11. Article 8 of the Agreement says, ‘Our partnership and brotherhood will be for the long term’. It is true that there is no express provision regarding the term of the Agreement. Both parties agreed that the Agreement will last until 31 March 2019.

12. This is evidenced by the fact that RESPONDENT had obtained the necessary permit for jade-mining machinery and equipment from the government that were due to expire on 31 March 2019 (¶18 of the Problem). The jade-mining machinery and equipment, which were registered by RESPONDENT, were to be used for the partnership business, and they would play the essential roles for the jade-mining. The fact that RESPONDENT obtained governmental permission until 31 March 2019 means it was the intention of RESPONDENT that the partnership would last until 31 March 2019, at least. If RESPONDENT did not have such intention that it would not have got a permit for the jade-mining machinery and equipment that lasts until 31 March 2019.

B-2. The Term of the Agreement continues at Least until November 2017

13. In addition, there is a fact that RESPONDENT clearly expressed its intention to continue the partnership until November 2017. It is when CLAIMANT was approached by Hashimoto CO., Ltd (hereinafter "HCL") on October 2016 regarding the supply of jades from the Hpakant mines. When Dr. Asamura, the head of CLAIMANT discussed this matter with Mr. U Thein Kyaw, the head of RESPONDENT, Mr. Kyaw, told Dr. Asamura, to proceed with the engagement with HCL and they should not miss the business opportunity. (¶35 of the Problem)

14. When Mr. Kyaw told so, he had known that the contract with HCL would last for at least one year from October 2016, because Dr. Asamura explained. Also, Mr. Kyaw had understood that in order to perform the contract with HCL, CLAIMANT has to provide the jades that would be produced from the partnership business. Therefore, the fact that Mr. Kyaw told Dr. Asamura to proceed the contract with HCL, is the evidence, that he had the understanding that the partnership by RESPONDENT and CLAIMANT would continue to last at least during the contract with HCL exist, that is, until November 2017.

B-3. RESPONDENT Had Understanding Of The Term Of The Agreement

15. If Mr. Kyaw did not have the above-mentioned understanding regarding the term of the Agreement, and he considered that the Agreement may terminate whenever he wants, he would not tell Dr. Asamura to enter a contract with HCL to supply jades from Hpakant. And this fixed term of the contract with HCL has not been expired.

16. Therefore, even though the Agreement does not specifically stipulate about the term of Agreement, it is clear that there was a mutual agreement and common intention that the Agreement continues until 31 March 2019, or at least until November 2017. Thus, the fixed term has not been completed, and RESPONDENT cannot terminate the Agreement under the Article 42 (a) of the Partnership Act.

C. Article 42 (b) of the Partnership Act: The Adventure of the Agreement has Not Yet Completed

17. Under article 42 (b) of the Partnership Act, the Agreement may be terminated if the adventures of the Agreement is completed. In this Agreement, the adventure is to

do jade-mining business and has not been completed as explained below. Therefore, RESPONDENT cannot terminate the Agreement.

C-1. Adventure Of The Contract Does Not Complete Until 31 March 2019

18. As CLAIMANT submitted in the previous paragraphs above, both parties had the intention to do jade-mining business until 31 March 2019. Therefore, the adventure of doing the jade business had not been completed when RESPONDENT tried to terminate the Agreement on 10 January 2017. Furthermore, as mentioned in paragraph 9, it is common intention of the parties that the partnership would supply the jades to HCL until 1 November 2017. Therefore, both parties had the common intention that the partnership would supply the jade to HCL at least until 1 November 2017, which means the Agreement's adventure of doing jade-mining business will not be completed at least until the expiry of the contract with HCL.

C-2. The Adventure Has Not Been Completed Yet

19. RESPONDENT tried to terminate the Agreement on 10 January 2017. However, the adventure had not yet completed and RESPONDENT as proven in the previous

paragraphs. Therefore, RESPONDENT is not allowed to terminate the Agreement by relying on the Article 42 (b) of the Partnership Act.

D. Article 39 of the Contract Act: There was No Breach of Contract by CLAIMANT

D-1. There was No Breach Of Contract

20. Under Article 39 of the Contract Act, a breach of contract by a party gives the other party a right to terminate the contract. However, there was no breach of contract by CLAIMANT as explained below. Therefore, RESPONDENT is not allowed to terminate the Agreement relying on this article.

D-2. Article 11 Of The Agreement and Dr. Fiona's statement has no Relation

21. RESPONDENT might argue that Dr. Fiona Lum's statement during the interview with the Asian Influencers Magazine constitutes a breach of Article 11 of the agreement, which stipulates, 'AID cannot do or say anything harmful to the national interest and solidarity of Myanmar and vice versa.

22. Dr. Yugi Asamura and his wife, Dr. Fiona Lum had an interview with the Asian Influencers Magazine for its 2016 edition. And during this interview, Dr. Fiona Lum and Dr. Yugi Asamura were asked about their views on the plea of the Rohingya minority in the Rakhine state. And according to her position as the President of Second Life, which is a regional organization she manages, Dr. Fiona Lum answered, “Everyone must work together to end the persecution of Rohingya people, and the new Myanmar government under the leadership of Daw Su must end the problem immediately. Especially the ethnic cleansing. They should not be deprived of their basic human rights. We will continue to champion for their rights”. (¶27, 28) RESPONDENT might argue that this statement, showing criticism over Myanmar’s policy, is a breach of Article 11 of the Agreement. However, her statement does not constitute a breach of contract for following reasons;

23. Dr. Fiona Lum’s Statement has No Relation with National Interest, thus there is No Breach of Article 11

24. First, Dr. Fiona Lum did not make her statement on behalf of CLAIMANT. She was invited to the interview because of her position as a President in Second Life.

(¶27) Dr. Fiona Lum is a non-executive director, but she does not hold a managerial position in CLAIMANT. Her comment on the interview was a purely personal opinion, or at least as a representative of Second Life, and she was not commenting as a representative of CLAIMANT.

25. Second, the statement was not against the national interest of Myanmar. This is because her statement only touches on working condition or human rights of Rohingyas, and doesn't relate to the national interest of Myanmar. Therefore, Dr. Fiona Lum's statement during the interview does not constitute a breach of the Article 11 of the Agreement.

D-3. There Is No Other Breach Of Contract

26. Moreover, there is no fact that CLAIMANT had breached other provisions of the Agreement.

27. Therefore, the termination of the Agreement due to a breach of the contract by CLAIMANT is not valid.

Issue (ii): The ownership of the jade-mining machinery and equipment

The Ownership of the Jade-Mining Machinery and Equipment is Owned Solely by CLAIMANT

28. CLAIMANT requests the tribunal to find that the ownership of the jade-mining machinery and equipment used for the partnership belongs to CLAIMANT. CLAIMANT had bought the jade-mining machinery and equipment and it has been lending the jade-mining machinery and equipment to the partnership as proved in the following paragraphs.

A. Registration of the Jade-Mining Machinery and Equipment was for the Convenience Sake[T1]

29. Article 4 of the Agreement stipulates, 'AID will buy and provide all equipment required, and provide technical expertise for the term of the agreement'. According to this article, CLAIMANT purchased the jade-mining machinery and equipment and reconditioned in Japan and provided to the partnership for the term of the agreement (¶16 of Moot Problem).

30. The jade-mining machinery and equipment have been used for the extraction in Hpakant, which CLAIMANT has been taking charge of. Under article 6 of the Agreement, it stipulates that ‘Our business is divided into four parts: extract the jade, cutting the jade, process the jade, and then sell the jade. Based on both sides’ expertise, the control of the activities will be split. For extracting and cutting AID will take charge and give the direction and instructions’. By using the jade-mining machinery and equipment that CLAIMANT purchase, CLAIMANT has operated and maintained the jade mining venture business. These facts show that the jade-mining machinery and equipment were purchased and owned by CLAIMANT and used by CLAIMANT to perform its role in the jade-mining venture business the words “provide” in Article 6 should be construed to mean that these machinery and equipment to be brought into the site of the project for CLAIMANT to perform its obligation in the partnership.

B. There is No Fact or Article Which Proves RESPONDENT has the Ownership

31. It should be pointed out that there is no fact showing that both parties agreed to transfer the title to the machinery and equipment to RESPONDENT, such as a written or oral agreement between parties or consideration for the transfer of title to the machinery and equipment. RESPONDENT might argue that the fact that RESPONDENT is recorded as the owner of the jade-mining machinery and equipment relating to the permission from Myanmar government is a clear evidence of the ownership of RESPONDENT. However, the record of the jade-mining machinery and equipment for the purpose of getting permission from Myanmar government is not related to the transfer of title. RESPONDENT was recorded as the owner and operator of the jade-mining machinery and equipment to "ensure the smooth flow of works at the jade field" (¶18), and both parties did not have any intention to transfer to the machinery and equipment.

Issue (iii): Subsistence and ownership of rights in the JADEYE software

The Ownership Right in the JADEYE Software is CLAIMANT

32. CLAIMANT is the owner of rights in the JADEYE software and RESPONDENT has no right in the JADEYE software. RESPONDENT is not allowed to make reverse engineer or create their own version of JADEYE. This is because the JADEYE software has been made by Joe Yamashita who was the CLAIMANT's employee and the JADEYE software it is the invention by CLAIMANT.

JADEYE was invented by the employee of CLAIMANT The background of the invention of the JADEYE software

33. Joe Yamashita, who made the JADEYE software, was one of CLAIMANT's finance executives. 'He has been working in the development of a process optimisation and operations management software, and that he was now confident that the JADEYE software was ready to be used'. (¶21). It is not important that Joe Yamashita was in Myanmar when he invented the JADEYE. In fact, according to Question 14 of Additional Clarifications to the Moot Problem, AID paid the

salary of AID's employees working in Myanmar under the Partnership Agreement. So, while Joe Yamashita was in Myanmar to perform CLAIMANT's work for the partnership, he invented the JADEYE as an employee of CLAIMANT.

JADEYE was invented as a part of CLAIMANT's work

34. In addition, it must be pointed out that the JADEYE software was invented to improve the works of CLAIMANT. Under Article 6 of the Agreement, 'For extracting and cutting AID will take charge of the extracting and cutting and give the direction and instructions'. The JADEYE software allows the user to test the quality and viability of the jade at 99% accuracy. Also, the JADEYE can expedite assessment work and assist the determination of scalability and economic value of the site. All of these benefits relate to the extracting and cutting of the jade, which CLAIMANT is in charge. According to Ownership of the results of Joint Ventures, '(1) Each party can become the "owner" of rights derived from work carried out by it during the collaboration. Indeed, this will prima facie be the legal position where a party carries out a discrete segment of the work. (The basic position under English law is that IPR generated by employees will belong to their employer;

contractual provision will, however, be necessary to assign IPR to a party commissioning work carried out by non-employees.) Provision can then be made for cross-licensing of IPR between the parties for the purpose of the collaboration'[4]. In this case, CLAIMANT took charge of the operation of the JADEYE software. Thus, CLAIMANT owns the rights to the JADEYE software.

Joe Yamashita engaged himself in the jade mining business as the employee of CLAIMANT

35. The invention of the JADEYE software was related to the role of CLAIMANT. Under Article 6 of the Agreement, AID was in charge of the extracting and cutting the jade. The JADEYE software was able to enhance that role and its software has increased the efficiency of the jade mining business. Thus, CLAIMANT owns the JADEYE software. Furthermore, it is not important that Joe Yamashita was in Myanmar. In fact, according to Question 14 of Additional Clarifications to the Moot Problem, AID paid the salary of AID's employees working in Myanmar under the

[4] Joint Ventures

Partnership Agreement. Therefore, the JADEYE software was for the related work of CLAIMANT and that software is owned by CLAIMANT.

The JADEYE software is not for the benefit of all of us

36. Although Joe Yamashita remarked, 'the JADEYE was "for the benefit of all of us" (¶24), he handed the source code of the JADEYE software to CLAIMANT when he resigned from CLAIMANT on 4 January 2013. (¶25) If Joe Yamashita or AID understood that the ownership of right in the JADEYE software belong to either RESPONDENT or the Partnership, he would not hand the source code of the JADEYE software to only the Head of Finance of CLAIMANT or to provide it also to RESPONDENT. Moreover, RESPONDENT never requested to provide the source code of it although RESPONDENT has known that Joe Yamashita, who was the only author of the JADEYE software, resigned from CLAIMANT. If RESPONDENT understood that they owned the JADEYE software, RESPONDENT would have requested to provide the source code.

RESPONDENT is not allowed to reverse engineer their own version of the

JADEYE

37. As stated above, CLAIMANT owns the right of the JADEYE software. Conversely, neither RESPONDENT nor the Partnership has no right in the JADEYE software. Thus, RESPONDENT is not allowed to reverse engineer or create their own version of JADEYE.