

[국제계약실무] License, Collaboration Agreement 당사자의 M&A 등 경영권 변경사유,
change of control 발생 상황에 대비한 계약조항



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이와 같은 상황에 대비하여 미리 해결방안을 계약조항으로 규정해 두는 것이 바람직합니다. 다양한 쟁점이 있겠지만, 최근 올려드린 자문의 계약서 중 해당 조항을 뽑아 아래와 같이 인용합니다. 찬찬히 읽어 보고 살펴보시기 바랍니다.

정의 - "CHANGE IN CONTROL" shall mean, with respect to either Party, any of the following events: (i) the **acquisition** by any Major Pharmaceutical Company of "beneficial ownership" directly or indirectly, of 50% or more of the shares of such Party's capital stock, the holders of which have general voting power under ordinary circumstances to elect at least a majority of such Party's Board of Directors or equivalent body (the "Board of Directors") (the "Voting Stock"); (ii) the approval by the shareholders of such Party of a **merger, share exchange, reorganization, consolidation or similar transaction** of such Party (a "Transaction"), if any party to the transaction is a Major Pharmaceutical Company other than a Transaction which would result in the beneficial owners of Voting Stock of such Party immediately prior thereto continuing to beneficially own (either by such Voting Stock remaining outstanding or being converted into voting securities of the surviving entity) more than 50% of the Voting Stock of such Party or such surviving entity immediately after such Transaction; or (iii) approval by the shareholders of such Party of a complete liquidation of such Party or a sale or disposition of all or substantially all of the assets of such Party.

처리방안 계약조항 - CHANGE IN CONTROL. In the event there shall be a Change in Control with respect to either Party, the Party not involved in the Change in Control shall

have a period of ninety (90) days following the Change in Control to give notice to the other Party that it desires to terminate this Agreement. If such notice is given, then the Parties shall arrange for a **valuation** of the value of their respective interests in this Agreement using the procedures set forth in Section 12.7(b)(i).

Upon receipt of the valuation, the Party not involved in the Change in Control shall have the **option** within thirty (30) days of receipt of the valuation either to (i) **withdraw** its notice terminating this Agreement or (ii) **confirm its desire to terminate**, in that case the Party experiencing the Change in Control shall **elect** either to (a) purchase the other Party's interest at the established value or (b) sell its own interest to the other Party at the appraised value of its interest. The Parties shall negotiate in good faith such other terms and conditions and take such other actions as shall be necessary to effect the sale or purchase contemplated hereby within the shortest possible time.

신약 기술이전 및 공동연구개발 계약

8.5. Change of Control.

8.5.1. Change of Control Notice. Astellas will notify Ironwood in writing, referencing this Section 8.5.1 of this Agreement, immediately upon any Change of Control of Astellas, and will provide such notice where possible at least 60 days prior to the Change of Control.

8.5.2. Consequences of a Change of Control.

(a) In the event that Astellas is subject to a Change of Control which could reasonably be expected to lead to an Impairment (as defined below), Astellas will notify Ironwood at least [**] days prior to the closing of such transaction, and Ironwood **may elect**, in its sole discretion, to (i) **continue** this Agreement in accordance with its terms, (ii) **terminate** this Agreement on [**] months notice, during which period this Agreement would continue in effect in accordance with its terms, such notice to be delivered within [**] days after the **Fair Market Value** is determined pursuant to this Section 8.5.2(a). Within [**] days following Ironwood's receipt of notice from Astellas of a Change of Control that could reasonably be expected to lead to an Impairment, Ironwood will provide notice to Astellas requesting a determination of the Fair Market Value upon a termination of this Agreement pursuant to this Section 8.5.2(a), and the failure to so request such **valuation**

will be deemed the election to continue this Agreement in accordance with its terms. Such determination must be made by the Parties in good faith, and if such determination is not made within [**] days of the request, then as determined by a **Valuation Panel**. In connection with such termination, Ironwood will be required to pay Astellas an amount equal to the upfront portion of the Fair Market Value within ten days of the effective date of the termination, and, as they become due, payment of any ongoing, and/or recurring license fees, royalties, and other payments that may be part of Fair Market Value.

(b) For purposes of this Section 8.5.2, an "**Impairment**" will only be deemed to occur if (a) it is reasonably anticipated that the entity resulting from such Change of Control will be unable to perform its obligations in accordance with the terms of this Agreement, as reasonably determined based on objective criteria available to both Parties, including without limitation, the **new entity's financial position and product pipeline**, (b) the product line of the entity that survives following the Change of Control includes a product in an Oral Formulation in the Field that is in clinical development which is indicated for the treatment of IBSC, CC, OIC (unless as to any such indication, the JSC has determined not to pursue Development for such indication) or any other indication for

which the Product is then being Commercialized in the Territory pursuant to this Agreement.

국제계약, 영문계약, 계약분쟁, 손해배상, Claim, License, R&D 제휴계약

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