

기술이전, 라이선스, 특허실시, 공동연구개발 국제계약서, 영문계약서에서 면책조항

Indemnification 계약조항 샘플



15. MUTUAL INDEMNIFICATION AND INSURANCE.

15.1 Licensor's Right to Indemnification.

Subject to the provisions of this Agreement, Licensee shall indemnify, defend and hold harmless Licensor and its Affiliates, and their respective employees, officers, independent contractors, consultants or agents, and their respective successors, heirs and assigns and representatives (the "Licensor Indemnitees"), from and against any and all claims, threatened claims, damages, losses, suits, proceedings, liabilities, costs (including without limitation reasonable legal expenses, costs of litigation and reasonable attorneys' fees) or

judgments, whether for money or equitable relief, of any kind ("Losses and Claims"), to the extent arising out of or relating to, directly or indirectly:

(a) the negligence, recklessness or wrongful intentional acts or omissions of Licensee, its Affiliates and/or its Sublicensees and its or their respective employees, officers, independent contractors, consultants or agents, in connection with Licensee's performance of its obligations or exercise of its rights under this Agreement;

(b) any breach by Licensee of any representation, warranty, covenant or obligation set forth in this Agreement; and/or

(c) the Development and/or Commercialization (including, without limitations, the promotion, advertising, offering for sale, sale or other disposition), transfer, importation or exportation, labeling, handling storage, use of, exposure to any Licensed Products actually conducted by or for Licensee or any of its Affiliates, Sublicensees, agents and independent contractors (in each case, excluding any Development, Manufacture or Commercialization activities carried out by and/or on behalf of Licensor either within the Territory or outside the Territory); except in each such case for Losses and Claims to the extent reasonably attributable to any negligence, recklessness, wrongful or intentional acts or omissions, or breach of this Agreement by Licensor or a Licensor Indemnitee.

15.2 Licensee's Right to Indemnification.

Subject to the provisions of this Agreement, Licensor shall indemnify, defend and hold harmless Licensee and its Affiliates, and their respective employees, officers, independent contractors, consultants or agents, and their respective successors, heirs and assigns and representatives (the "Licensee Indemnitees"), from and against any and all Losses and Claims, to the extent arising out of or relating to, directly or indirectly:

(a) the negligence, recklessness or wrongful intentional acts or omissions of Licensor, its Affiliates and/or its Sublicensees and its or their respective employees, officers, independent contractors, consultants or agents, in connection with Licensor's performance of its obligations or exercise of its rights under this Agreement;

(b) any breach by Licensor of any representation, warranty, covenant or obligation set forth in this Agreement; and/or

(c) the Development and/or Commercialization (including without limitation promotion, advertising, offering for sale, sale or other disposition), transfer, importation or exportation, labeling, handling storage, use of, exposure to any Licensed Products actually conducted by or for Licensor or any of its Affiliates, Sublicensees, agents and independent

contractors within or outside the Territory (in each case, excluding any Development or Commercialization activities carried out by Licensee or on behalf of Licensee at ALLERGAN's direction hereunder either within or outside the Territory; provided that, notwithstanding anything to the contrary, Development or Commercialization activities commenced or performed before the Closing Date shall not be considered activities carried out by, for or on behalf of Licensee for the purposes of this indemnification obligation);

(d) subject to Section 15.5, the practice of the Licensed Intellectual Property in connection with the Licensed Products violates, infringes upon, or misappropriates the intellectual property rights of any Third Party; and

(e) personal injury or death, or any damage to any property, was caused by a defect in any Licensed Products manufactured by or for Licensor; except in each such case for Losses and Claims to the extent reasonably attributable to any negligence, recklessness, wrongful or intentional acts or omissions, or breach of this Agreement by Licensee or an Licensee Indemnitee.

15.3 Process for Indemnification.

A Party's obligation to defend, indemnify and hold harmless the other Party under this

Article 13 shall be conditioned upon the following:

(a) A Party seeking indemnification under this Article (the "Indemnitee") shall give prompt written notice of the claim to the other Party (the "Indemnitor"). Failure to promptly notify the Indemnitor of any such claim shall not relieve the Indemnitor of any such duty to so indemnify except to the extent that the Indemnitor can demonstrate actual loss and prejudice as a result of such failure.

(b) Each Party shall furnish promptly to the other Party copies of all papers and official documents received in respect of any Losses and Claims. Failure to promptly furnish the other Party with such papers and official documents shall not relieve the other Party of any duty to indemnify except to the extent that the other Party can demonstrate actual loss and prejudice as a result of such failure. The Indemnitee shall cooperate as requested by the Indemnitor in the defense against any Losses and Claims.

(c) The Indemnitor shall have the right to assume and control the defense of the indemnification claim, including any settlement of such claim, at its own expense with counsel selected by the Indemnitor and reasonably acceptable to the Indemnitee. The

Indemnitee may participate in and monitor such defense with counsel of its own choosing at its sole expense. The Indemnitor shall not settle or compromise the indemnification claim in any manner which would have an adverse effect on the Indemnitee's interests (including without limitation in relation to the scope or enforceability of the Licensor Patent Rights or Licensor Know-How, or Confidential Information or Patent or other rights licensed to Licensee by Licensor hereunder), without the prior written consent of the Indemnitee, which consent, in each case, shall not be unreasonably withheld, delayed or conditioned. The Indemnitee shall reasonably cooperate with the Indemnitor at the Indemnitor's expense and shall make available to the Indemnitor all pertinent information under the control of the Indemnitee.

(d) If the Indemnitor does not assume and conduct the defense of the claim as provided above, (i) the Indemnitee may defend against, consent to the entry of any judgment, or enter into any settlement with respect to such claim in any manner the Indemnitee may deem reasonably appropriate (and the Indemnitee need not consult with, or obtain any consent from, the Indemnitor in connection therewith), and (ii) the Indemnitor shall remain responsible to indemnify the Indemnitee as provided in this Article.

15.4 **Insurance.**

(a) During the Term and for three (3) years thereafter, Licensee, at its sole expense, shall maintain such types and amounts of insurance coverage relating to product liability (including without limitation, premises operations, completed operations and broad form contractual liability) that is comparable in type and amount to the insurance customarily maintained by pharmaceutical companies with respect to similar prescription pharmaceutical products that are marketed, distributed and sold, and which names Licensor as an additional insured Party, as its interests may appear.

(b) During the Term and for three (3) years thereafter, Licensor, at its sole expense, shall maintain such types and amounts of insurance coverage relating to product liability (including without limitation, premises operations, completed operations and broad form contractual liability) that is comparable in type and amount to the insurance customarily maintained by pharmaceutical companies with respect to similar prescription pharmaceutical products that are marketed, distributed and sold, and which names Licensee as an additional insured Party, as its interests may appear.

15.5 Limitation on Certain Indemnities.

Notwithstanding Licensor's indemnification obligations under Section 15.2, in the event of Losses and Claims arising out of Section 15.2(d), Licensee shall recover from Licensor such Losses and Claims from fifty percent (50%) of the sum of all payments made by Licensee to Licensor prior to the date of the award of such Losses and Claims, not including the Up-Front Payment pursuant to Section 8.1, and, in the event that such awarded Losses and Claims exceed such amount, Licensee may deduct any such excess Losses and Claims from payments due by Licensee to Licensor after the date of the award of such Losses and Claim, up to a maximum of fifty percent (50%) of each such payment, until Licensee has been compensated in full for all such awarded Losses and Claims.

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

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