

국제계약, 영문계약, 특허실시, 영업비밀, 기술이전 라이선스 계약서에서 계약종료, 계약
해지, TERMINATION 영문조항 샘플



17. TERM AND TERMINATION.

17.1 Termination Prior to the Closing Date.

This Agreement may be terminated at any time prior to the Closing Date (with respect to Sections 17.1(b) and 17.1(c) below, by written notice by the terminating Party to the other Party): (a) by mutual written agreement of the Parties;

(b) by Licensor or Licensee, if a court of competent jurisdiction or other Governmental Authority shall have issued a non-appealable final order, decree or ruling or taken any other non-appealable final action, in each case, having the effect of permanently restraining,

enjoining or otherwise prohibiting the transactions contemplated by this Agreement; provided, however, that the right to terminate this Agreement under this Section 17.1(b) shall not be available to any Party whose failure to fulfill any obligation under this Agreement has been the primary cause of, or materially contributed to, such action; or

(c) by Licensee, if Licensor has breached any representation, warranty, covenant or agreement of Licensor set forth in this Agreement which (i) would result in a failure of a condition set forth in Section 13.2 and (ii) is not cured within thirty (30) calendar days after written notice thereof.

17.2 **Term.**

Except as provided in Section 17.1, this Agreement shall continue until the date of expiration of the Royalty Term, unless earlier terminated in accordance with this Article 17 (the "Term").

17.3 **Termination of the Agreement After the Closing Date.**

(a) **Termination by Licensee.**

Licensee may terminate this Agreement in its entirety or in part (including, for example, on a country-by-country basis) for any reason (a) upon at least ninety (90) days prior written notice to Licensor if such notice is delivered prior to the First Commercial Sale of a Licensed Product anywhere in the Territory or (b) upon at least one hundred eighty (180) days prior written notice to Licensor if such notice is delivered after the First Commercial Sale of a Licensed Product anywhere in the Territory. In the event of any significant adverse clinical events or the termination of a Clinical Trial for safety reasons and Licensee terminates this Agreement under this Section 17.3(a), the foregoing notice periods in clauses (a) and (b) shall be reduced to forty-five (45) days and ninety (90) days, respectively.

(b) **Termination for Material Breach.**

If either Party believes the other is in material breach of its obligations under this Agreement, it may give notice of such breach to the other Party, which Party shall have sixty (60) days in which to remedy such breach, or thirty (30) days in the case of material breach of any payment obligation hereunder.

Such sixty (60) day period shall be extended in the case of a breach not capable of being remedied in such sixty (60) day period so long as the breaching Party uses diligent efforts to remedy such breach and is pursuing a course of action that, if successful, will effect such a remedy; provided, however, that such cure period shall not be extended more than sixty (60) additional days.

If such alleged breach is not remedied or is not capable of being remedied within the period set forth above, the non-breaching Party shall be entitled, without prejudice to any of its other rights conferred on it by this Agreement, and in addition to any other remedies available to it by law or in equity, to terminate this Agreement upon written notice to the other Party. In the event of a dispute regarding any payments due and owing hereunder, all undisputed amounts shall be paid when due and the balance, if any, shall be paid promptly after settlement of the dispute including any accrued interest thereon.

(c) **Consequences of Termination.**

In the event that either Party terminates this Agreement, then as of the effective date of

such termination, the following terms and conditions shall apply:

(i) **Termination by Licensor for Licensee's Material Breach.**

In the event of termination of this Agreement by Licensor pursuant to Section 17.3(b) for Licensee's uncured material breach, and except for each Party's rights and obligations that survive termination as set forth in Section 17.5:

(A) all licenses and rights granted by either Party under this Agreement shall terminate with the exception, subject to Section 19.1, of the license granted to Licensor by Licensee under the Licensee Inventions relating to formulations or methods of manufacturing formulations derived from the Licensed Intellectual Property pursuant to Section 9.2(c) which shall become perpetual, worldwide and fully paid;

(B) Licensee shall pay Licensor any and all payments that have accrued prior to the effective date of such termination;

(C) Licensee shall transfer to Licensor all materials, results, analyses, reports, websites, marketing materials, technology, know-how and other Information in whatever form received by Licensee from Licensor as of the effective date of such termination;

(D) Licensee shall transfer to Licensor (A) all Regulatory Approvals in the Territory in effect as of the date of such termination and/or (B) any and all Information pertaining to the Development and Commercialization of the Licensed Products in the Territory, including but not limited to any and all Clinical Trial data pertaining to the Territory.

(ii) **Termination by Licensee.**

Subject to Section 17.3(c)(ii)(E), in the event of termination of this Agreement by Licensee pursuant to Section 17.3(a), and except for each Party's rights and obligations that survive termination as set forth in Section 17.5:

(A) all licenses and rights granted by either Party under this Agreement shall terminate, with the exception, subject to Section 19.1, of the license granted to Licensor by Licensee under the Licensee Inventions relating to formulations or methods of manufacturing

formulations derived from the Licensed Intellectual Property pursuant to Section 9.2(c), which shall become worldwide, subject to Licensor's obligations under subsection (E) below;

(B) Licensee shall pay Licensor any and all payments that have accrued prior to the effective date of such termination;

(C) Licensee shall transfer to Licensor all materials, results, analyses, reports, websites, marketing materials, technology, know-how and other Information in whatever form received by Licensee from Licensor as of the effective date of such termination;

(D) Licensee shall, upon receipt of reasonable consideration from Licensor based on an actual cost basis, transfer to Licensor (A) all Regulatory Approvals in the Territory in effect as of the date of such termination and/or (B) any and all Information pertaining to the Development and Commercialization of the Licensed Products in the Territory, including but not limited to any and all Clinical Trial data pertaining to the Territory; and

(E) in partial consideration for (A) Licensee's costs of obtaining and maintaining such Regulatory Approvals and Commercializing Licensed Products in the Territory prior to the date of such termination, and/or (B) subject to Section 19.1, the license granted under the Licensee Inventions, Licensor shall pay to Licensee following the effective date of such termination, on a product-by-product and country-by-country basis, a commercially reasonable royalty to be negotiated in good faith by the Parties, on all sales by Licensor, its Affiliates and Sublicensees, of products that would have been Licensed Products, had they been sold by Licensee prior to the effective date of such termination.

(iii) **Termination by Licensee for Licensor's Material Breach.**

In the event that Licensee has the right to terminate this Agreement for Licensor's uncured material breach pursuant to Section 17.3(b), Licensee may terminate this Agreement or, in lieu of such termination, by written notice to Licensor after a determination that such breach was a material breach and was not cured before the expiration of the cure period set forth in Section 17.3(b), elect to retain all of the rights and licenses granted to Licensee hereunder for the remainder of the Term. Following such an election by Licensee:

(A) Licensee may request that damages be awarded to Licensee for Licensor's uncured material breach by final and binding arbitration conducted in accordance with Section 19.12. In determining whether damages should be awarded to Licensee, the arbitrators shall consider the nature of Licensor's uncured material breach and the impact of such uncured material breach on Licensee and the transactions contemplated by this Agreement.

In the event that such final and binding arbitration determines that Licensee should be awarded damages, Licensee shall be entitled to deduct the amount of such damages from milestone and royalty payments to be paid to Licensor under Sections 8.2 and 8.3;

(B) the limitations applicable to Licensor's activities as set forth in Sections 2.3(a) and 2.4 shall continue to apply; and

(C) the license granted by Licensee to Licensor under Section 9.2(c) shall terminate.

17.4 **Surviving Obligations.**

Upon termination of this Agreement, the Parties shall remain obligated to make all payments which have accrued under this Agreement prior to the date of termination, when and as they become due and payable. In addition, the provisions in Articles 1, 9, 10, 14, 15, 16, 18 and 19, and Sections 2.6, 5.2, 5.7, 7.6, 8.3(h), 8.7 (with respect to payment accruing prior to the effective date of termination), 8.8, 8.9, 17.3(c), 17.4 and 17.5 of this Agreement shall survive termination of this Agreement for any reason.

17.5 **Accrued Rights.**

Termination or expiration of this Agreement shall not relieve either Party from obligations that are expressly indicated to survive termination or expiration of the Agreement.

Termination by a Party shall not be an exclusive remedy and all other remedies will be available to the terminating Party, in equity and at law.

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

T. 02-591-0657 E. kkh@kasanlaw.com H. www.kasanlaw.com