

KEYTRUDA 기술이전, 공동개발 라이선스 - Moderna, MSD의 2018년 계약서 중 분쟁해

결 조항 Dispute clause 샘플



15.1 Dispute Resolution.

(a) Disputes. Disputes of any nature arising under, relating to, or in connection with this Agreement (“Disputes”) will be resolved pursuant to this Section 15.1.

(b) Dispute Escalation.

In the event of a Dispute between the Parties, the Parties will first attempt to resolve such dispute by negotiation and consultation between themselves or the [JSC](#). In the event that such dispute is not resolved on an informal basis within [*] days from receipt of the written

notice of a Dispute, any Party may, by written notice to the other (or with respect to a Dispute arising at the JSC, by the JSC within [*] days after the JSC first considers such Dispute in accordance with Section 2.4(c)), have such dispute referred to the [Executive Officers](#) (or their designee, which designee is required to have decision-making authority on behalf of such Party), who will attempt to resolve such Dispute by negotiation and consultation for a [*] day period following receipt of such written notice.

(c) [Full Arbitration](#).

(i) In the event the Parties have not resolved such Dispute within [*] of receipt of the written notice referring such Dispute to the Executive Officers, either Party may at any time after such [*] period submit such Dispute to be finally settled by arbitration administered in accordance with the procedural rules of the American Arbitration Association ("AAA") in effect at the time of submission, as modified by this Section 15.1(c). The arbitration will be governed by the Laws of the state of New York. The arbitration will be heard and determined by three (3) arbitrators who are retired judges or attorneys with at least [*] of relevant experience in the pharmaceutical and biotechnology industry, each of whom will be impartial and independent. Each Party will appoint one (1) arbitrator and the third (3rd)

arbitrator will be selected by the two (2) Party-appointed arbitrators, or, failing agreement within [*] following appointment of the second arbitrator, by AAA. Such arbitration will take place in [*]. The arbitration award so given will be a final and binding determination of the dispute, will be fully enforceable in any court of competent jurisdiction, and will not include any damages expressly prohibited by Section 13.5. Fees, costs and expenses of arbitration are to be divided by the Parties in the following manner: Merck will pay for the arbitrator it chooses, Moderna will pay for the arbitrator it chooses, and the Parties will share payment for the third arbitrator. Except in a proceeding to enforce the results of the arbitration or as otherwise required by applicable Law, neither Party nor any arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of both Parties (each such consent not to be unreasonably withheld, delayed or conditioned).

(ii) In addition to the foregoing provisions of this Section 15.1(c), in the event that a provision of this Agreement requires "Special Arbitration", then the following rules will apply with respect to the Dispute that is subject to Special Arbitration: Within [*] of the appointment of the third (3rd) arbitrator, each Party will submit to the arbitrators in writing its final proposal for resolving the matter that is the subject of such Dispute ("Dispute

Proposal”) and any relevant background information and materials it deems appropriate.

In connection with reaching its decision, the arbitrators may (A) order the Parties to produce any documents or other information that are relevant to the arbitrators’ decision, and (B) if the arbitrators deem it necessary, set a date for a hearing no later than [*]

Business Days (or such other period of time as agreed to by the Parties) after submission

of the last Dispute Proposal, to be attended by both Parties with each Party having the right to be represented by counsel of its choice. The arbitrators will determine which of

the two Dispute Proposals submitted by the Parties will prevail in the Special Arbitration

in the best interest of the applicable Collaboration Product(s), and will not have authority

to render any other substantive decision. The Dispute Proposal selected by the arbitrators

shall be binding on the Parties (and, to the extent such Dispute Proposal amends a Plan

or budget for a given Program, such Plan or budget shall be deemed amended to the

effect of such selected Dispute Proposal, as applicable). Such decision will be rendered by

the arbitrators no later than [*] Business Days after the later of (x) receipt by the arbitrators

of the Parties’ Dispute Proposals as set forth in this Section 15.1(c), or (y) the conclusion

of any hearing conducted pursuant to clause (B) above. The Parties will use diligent efforts

to cause the completion of any such arbitration within [*] following the initiating Party’s

written notice to submit the Dispute to Special Arbitration (or such longer period of time

as the Parties may mutually agree).

(d) **Injunctive Relief.**

Notwithstanding the dispute resolution procedures set forth in this Section 15.1, in the event of an actual or threatened breach of this Agreement, the aggrieved Party may seek provisional equitable relief (including restraining orders, specific performance or other injunctive relief), without first submitting to any dispute resolution procedures hereunder.

(e) **Tolling.**

The Parties agree that all applicable statutes of limitation and time-based defenses (such as estoppel and laches) will be tolled while the dispute resolution procedures set forth in this Section 15.1 are pending, and the Parties will cooperate in taking all actions reasonably necessary to achieve such a result.

15.2 **Cumulative Remedies and Irreparable Harm.**

All rights and remedies of the Parties hereunder will be cumulative and in addition to all

other rights and remedies provided hereunder or available by agreement, at law or otherwise. Each Party acknowledges and agrees that breach of any of the terms or conditions of this Agreement may cause irreparable harm and damage to the other and that such damage may not be ascertainable in money damages and that as a result thereof the non-breaching Party would be entitled to seek on an interim basis from a court and on a permanent basis from an arbitral tribunal equitable or injunctive relief restraining any breach or future violation of the terms contained herein by the breaching Party without the necessity of proving actual damages or posting bond. Such right to equitable relief is in addition to whatever remedies either Party may be entitled to as a matter of law or equity, including money damages.

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