

기술이전, 라이선스 등 영문계약서에 사용되는 일반조항 GENERAL PROVISIONS 계약조

항 샘플



15. MISCELLANEOUS.

15.1 **Agency**. Neither Party is, nor shall be deemed to be, an employee, agent, co-venturer, or legal representative of the other Party for any purpose, except as expressly set forth herein. No Party shall be entitled to enter into any contracts in the name of, or on behalf of the other Parties, nor shall either Party be entitled to pledge the credit of the other Parties in any way or hold itself out as having the authority to do so.

15.2 **Assignment**. Except as expressly provided in this Agreement, neither Party may assign

any rights or delegate any duties under this Agreement to any Third Party without the prior written consent of the other Party; provided, however, that (a) Licensor may freely assign its right to receive any payments hereunder without such consent of Licensee, (b) in the case where either Party seeks to assign this Agreement as a whole to an Affiliate or to a Successor in connection with a Change of Control of such Party or of that part of such Party's business to which this Agreement relates, such consent shall not be unreasonably withheld, delayed, or conditioned, provided that such Party provides written notice to the other Party of such Change of Control and such Successor agrees in writing to be bound as such Party hereunder. This Agreement shall be binding upon and inure to the successors and permitted assignees of the Parties and the name of a Party appearing herein shall be deemed to include the names of such Party's Successors and permitted assigns to the extent necessary to carry out the intent of this Agreement. Any assignment or transfer not in accordance with this Section 15.2 shall be null and void.

15.3 **Further Actions**. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

15.4 **Notices**. All notices and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when personally delivered or sent by confirmed facsimile or email (with hard copy to follow); (b) one (1) Business Day after sent by reputable overnight express courier (charges prepaid); or (c) five (5) Business Days following mailing by certified or registered mail, postage prepaid and return receipt requested. Unless another address is specified in writing, such notices to Licensor or Licensee shall be sent to the addresses indicated below:

15.5 **Amendment**. No amendment, modification, or supplement of any provision of this Agreement shall be valid or effective unless made in writing and signed by a duly authorized officer of each Party.

15.6 **Waiver**. No provision of this Agreement shall be waived by any act, omission or knowledge of a Party or its agents or employees except by an instrument in writing expressly waiving such provision and signed by a duly authorized officer of the waiving Party.

15.7 **Counterparts; Electronic Delivery.** This Agreement may be executed simultaneously in two counterparts, either of which need not contain the signature of more than one Party but both such counterparts taken together shall constitute one and the same agreement. Signatures to this Agreement transmitted by facsimile, by email in "portable document format" (".pdf"), or by any other electronic means intended to preserve the original graphic and pictorial appearance of this Agreement shall have the same effect as physical delivery of the paper document bearing original signature.

15.8 **Governing Law; Dispute Resolution.**

(a) This Agreement shall be governed by and interpreted in accordance with the substantive laws of the State of New York, U.S.A. without regard to its or any other jurisdiction's choice of law rules that would result in the application of the laws of any jurisdiction other than the State of New York, U.S.A.

(b) Except as otherwise provided in this Agreement, in the event of any dispute, controversy, or claim ("Dispute") between the Parties in connection with this Agreement, the

construction hereof, or the rights, duties or liabilities of either Party under this Agreement, the Parties shall first attempt in good faith to resolve such Dispute by negotiation and consultation between themselves. In the event that such Dispute is not resolved on an informal basis within ten (10) Business Days after one Party provides notice to the other Party of such Dispute, either Party providing such notice may, by written notice to the other Party refer such Dispute to the other Party for attempted resolution by good faith negotiation by the Chief Executive Officers or President of Licensor and the Chief Executive Officer, President or an Executive Vice President within thirty (30) days after such notice is received. In the event that any such Dispute is not resolved under the foregoing provisions, each Party may, at its sole discretion, seek resolution of such Dispute in accordance with Section 15.8(c). Any Disputes of the type described in Section 3.2(i) shall first be subject to the dispute resolution mechanism set forth in Section 3.2(i) before being subject to this Section 15.8.

(c) In the event such officers of the Parties are not able to resolve any such Dispute, either Party may at any time after such thirty (30) day period submit such Dispute to be finally settled by arbitration administered in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") in effect at the time of submission. The

arbitration shall be heard and determined by three (3) arbitrators. Each such Party shall each appoint one arbitrator and the third arbitrator shall be selected by the two Party-appointed arbitrators, or, failing agreement within thirty (30) days following the date of receipt by the respondent of the claim, by the AAA. Such arbitration shall take place in New York, NY. The arbitration award so given shall be a final and binding determination of the dispute, shall be fully enforceable in any court of competent jurisdiction, and shall not include any damages expressly prohibited by Section 12.1. The Parties agree that all applicable statutes of limitation and time-based defenses (such as estoppel and laches) shall be tolled while the dispute resolution procedures set forth in this Section 15.8(c) are pending.

(d) Notwithstanding anything herein to the contrary, nothing in this Section 15.8 shall preclude either Party from seeking interim or provisional relief, including a temporary restraining order, preliminary injunction or other interim equitable relief concerning a Dispute, including in a court of law, if necessary to protect the interests of such Party. This Section 15.8 shall be specifically enforceable.

(e) Notwithstanding the foregoing, any disputes regarding the validity, scope or enforceability of Patent Rights or trademarks shall be submitted to a court of competent jurisdiction in the territory in which such rights apply.

15.10 **Severability**. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Laws, but if any provision of this Agreement is held to be prohibited by or invalid under Applicable Laws, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement. In the event of such invalidity, the Parties shall seek to agree on an alternative enforceable provision that preserves the original purpose of this Agreement.

15.11 **Compliance with Applicable Laws**. Each Party will comply with all Applicable Laws in performing its obligations and exercising its rights hereunder.

15.12 **Remedies**. The exercise of any remedies hereunder shall be cumulative and in addition to and not in limitation of any other remedies available to such Party at law or in

equity.

15.13 **Force Majeure**. Neither Party shall be liable for delay or failure in the performance of any of its obligations hereunder if such delay or failure is due to causes beyond its reasonable control, including, without limitation, acts of nature, fires, earthquakes, strikes and labor disputes, acts of war, terrorism, or civil unrest ("Force Majeure"); provided that the affected Party promptly notifies the other Party and further provided that the affected Party shall use its commercially reasonable efforts to avoid or remove such causes of non-performance and to mitigate the effect of such occurrence, and shall continue performance with the utmost dispatch whenever such causes are removed. In the event any such Force Majeure event continues for three (3) months or more, the unaffected Party shall have the right to terminate this Agreement, effective as of the date of delivery of notice, which notice shall not be delivered prior to the end of such three (3) month period.

15.14 **Interpretation**. Each Party represents that it has been represented by legal counsel in connection with this Agreement and acknowledges that it has participated in the drafting hereof. In interpreting and applying the terms and provisions of this Agreement, the Parties

agree that no presumption will apply against the Party which drafted such terms and provisions.

15.15 **Construction**. In construing this Agreement, unless expressly specified otherwise: (a) unless otherwise specifically provided, any references to Articles, Sections, Exhibits, Schedules, and Appendices are to articles in, sections of, and exhibits, schedules and appendices to, this Agreement; (b) except where the context otherwise requires, use of either gender includes the other gender and use of the singular includes the plural and vice versa; (c) headings and titles are for convenience only and do not affect the construction or interpretation of this Agreement; (d) any list or examples following the word "including" shall be interpreted without limitation to the generality of the preceding words; (e) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof; (f) except where the context otherwise requires, the word "or" is used in the inclusive sense; (g) all references to "dollars" or "\$" herein shall mean US Dollars; (h) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such

amendments, supplements or modifications set forth herein or therein), (i) any reference to any Applicable Laws herein shall be construed as referring to such Applicable Laws as from time to time enacted, repealed or amended, and (j) any reference herein to any person or entity shall be construed to include the person's or entity's successors and assigns.

15.16 **Entire Agreement of the Parties.** This Agreement and the exhibits attached hereto constitute and contain the complete, final, and exclusive understanding and agreement of the Parties, and cancel and supersede any and all prior and contemporaneous negotiations, correspondence, understandings, and agreements, whether oral or written, between the Parties respecting the subject matter hereof, including without limitation the Confidentiality Agreement, and neither Party shall be liable or bound to any other Party in any manner by any representations, warranties, covenants, or agreements except as specifically set forth herein or therein. Nothing in this Agreement, express or implied, is intended to confer upon either Party, other than the Parties and their respective successors and assigns, any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided herein. To the extent that anything set forth in an exhibit attached hereto conflicts with the terms of this Agreement, the terms of this Agreement shall control.

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

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