

**NEW!**

M&A Clause Analytics

Powered by Analytics, Enhanced by Experts

Streamline and optimize the M&A drafting process with advanced document/clause analytics and expert guidance

M&A Clause Analytics, a comprehensive database of acquisition and ancillary agreements, provides vital insights and guidance for drafting, benchmarking, and negotiating better clauses and more complete agreements.

- **Instant Insights.** Easy-to-understand graphics show conformity of agreements and clauses to Models providing insight and guidance into accepted standards to apply to your own documents. Powerful search and browse tools guide you to on point language from a database of over one million individual clauses.
- **Integrated Practical Guidance.** Expertly prepared practical guidance, such as elements of the clause, drafting considerations, and intent of the clause, are shown alongside individual clauses, enhancing your understanding at the point of need.
- **Comparison and Benchmarking.** Multiple comparison tools allow you to efficiently benchmark your own documents, as well as all documents in the database, to the Models. In addition, all clauses can be compared to the models and to one another, extending your understanding of drafting techniques used by specific counsel or industries.

Transform Your M&A Drafting Workflow

All Results

Date Range
May 17, 1996 - Mar 06, 2017

Document Type

- Asset Purchase Agreement (790)
- Stock Purchase Agreement (739)

Law Firm

- Latham & Watkins, LLP (36)
- Skadden Arps Slate Meagher & Flom, LLP (23)
- Gibson Dunn (21)
- Coooley, LLP (19)
- Kirkland & Ellis, LLP (18)

Choose Law Firm

Industry

Pharmaceutical

Results for "Indemnification by Seller"

Model Document Clauses and Explanations

The Model Document Clause is provided to enhance the user's comprehension and understanding of the clause. It is editorially enhanced to give definitions and practice insights as well as checklists of what is traditionally included in that clause.

- Indemnification by Seller**
Asset Purchase Agreement
Updated January 22, 2018
- Indemnification by Seller**
Stock Purchase Agreement
Updated January 22, 2018

Other Example Clauses

Section 6.02 Indemnification by Seller (Indemnification by Seller)
CONCERT PHARMACEUTICALS, INC.
Asset Purchase Agreement - Mar 6, 2017
Market Cap: \$0.495B

Pharmaceutical Preparations

VII. INDEMNIFICATION (Indemnification by Seller)
PHH CORP
Asset Purchase Agreement - Feb 15, 2017
Market Cap: \$0.283B

Sorted by: Date

Conforms **89%** to the Model Clause

Instant Insights
Shows how the agreement conforms to the model.

Model Merger Agreement

The model is derived from the most conforming agreement found by comparing each clause in each agreement to all other agreements in the database. The resultant model contains all the clauses typically found in agreements of that type drafted in the most consistent manner. The most conforming agreement, which is used as the Model Agreement, is determined using a bell curve analysis. The Model Agreement is reviewed by subject matter experts for validity and suitability of language. In each case, the model agreement and clauses are editorially curated to conform to a consistent drafting style with deal specific language and values removed and anonymized. As the Model Agreement is an example of the most conforming document amongst the group, you may or may not want to use all of the clauses included in the model nor may it contain all the clauses you require based on the nature of your transaction.

[Download Model Agreement in Word Format](#)

[Compare your own document to the Model](#)

Considerations

Difficulty of Drafting: Low
The language in this provision is fairly simple and straightforward. Of course, you must provide for the correct merger type and must cite the correct merger statutes.

Risk of Legal Mistake: High
Improperly reflecting the agreed merger type could have disastrous consequences, including tax and shareholder approval consequences that vary significantly among the different merger types.

Level of Negotiation: Low
This provision is required in every merger agreement as it specifies the relevant merger type and applicable state laws. Although the type of merger may be negotiated, the language of this provision is rarely negotiated.

In rare circumstances, the merger type may be specified but subject to change so long as the newly agreed type does not (i) materially delay the transaction or (ii) alter any material aspects of the transaction.

Note that the exact name of the surviving company must be spelled out in this provision only if there will be a change in its name. Even slight changes in the name of the surviving company — such as changing "Company" "Inc." — must be specified in this provision.

Model Agreement | Plain-English Model

Articles and Clauses

Sorted by: Outline

Article	Clause
INTRO	Article
1. The Merger (The Merger)	Article
1.1. The Merger (The Merger)	Clause
1.2. Closing (Closing)	Clause
1.3. Effective Time (Effective Time)	Clause
1.4. Effects of the Merger (Effects of the Merger)	Clause
	Clause
	Clause
	Article
	Clause
	Clause

Compare and Benchmark
Compare your clause to a source clause, other clauses, or to the model.

Indemnification by Seller
Asset Purchase Agreement
Model Clause

12.3 Indemnification by Seller. Subject to the other provisions of this Article 12, from and after the Closing, Seller shall indemnify, hold harmless and reimburse Purchaser and its Affiliates, officers, directors, agents, successors and assigns (each, a "Purchaser Indemnified Party") from and against and in respect of any and all Losses which any Purchaser Indemnified Party may actually suffer or incur to the extent arising out of or related to: (a) the failure of any Seller Surviving Rep to be true and correct as of the date hereof or as of the Closing Date (or as of the date made, where such Seller Surviving Rep by its terms is made as of a specified date); provided, that any inaccuracy in or breach of any Seller Surviving Rep shall be determined without giving effect to any qualification as to "materiality" or "material adverse effect" set forth therein; (b) any breach by Seller of, or failure by Seller to perform, any of its covenants or other agreements set forth in this Agreement; and (c) the Excluded Liabilities.

Comparison

Section 6.02 Indemnification by Seller. Subject to the other provisions and conditions of this Article 12 § 12.3, from and after the Closing, Seller shall defend, indemnify, and hold harmless and reimburse Purchaser and its Affiliates, officers, directors, agents, successors and assigns (each, a "Purchaser Indemnified Party") from and against and in respect of any and all Losses which any Purchaser Indemnified Party may actually suffer or incur to the extent arising out of or related to: (a) the failure of any Seller Surviving Rep to be true and correct as of the date hereof or as of the Closing Date (or as of the date made, where such Seller Surviving Rep by its terms is made as of a specified date); provided, that any inaccuracy in or breach of any Seller Surviving Rep shall be determined without giving effect to any qualification as to "materiality" or "material adverse effect" set forth therein; (b) any breach by Seller of, or failure by Seller to perform, any of its covenants or other agreements set forth in this Agreement; and (c) the Excluded Liabilities.

Indemnification by Seller
Asset Purchase Agreement
CONCERT PHARMACEUTICALS, INC.
Dated as of March 06, 2017

Section 6.02 Indemnification by Seller. Subject to the terms and conditions of this Article VI, from and after the Closing, Seller shall defend, indemnify and hold harmless Buyer and its Subsidiaries and their respective officers, directors, Affiliates, stockholders, members, partners and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the "Buyer Indemnified Parties") in respect of any and all Damages incurred as a result or arising out of: (a) any (i) breach of any representation or warranty of Seller in this Agreement or § 5.02(c) of the certificate of Seller delivered at the Closing pursuant to Section 5.02(c) (without giving effect to any "Seller Material Adverse Effect" or other materiality threshold or qualifier contained therein, except in the case of the representation contained in Section 2.07 (c)), or (ii) failure to perform any covenant or agreement of Seller contained in this Agreement or the Related Agreements; (b) Seller's and its Affiliates' failure, fully or timely, to pay, satisfy or perform the Excluded Liabilities; (c) any Tax for which Seller is responsible pursuant to Section 8.01; (d) any Tax imposed on or relating to Acquired Assets that is attributable to any Pre-Closing Tax Period; (e) any failure by Seller, or claim by a creditor of Seller that Seller has failed to comply with the provisions of any applicable bulk sales, bulk transfer or similar laws; or (f) all costs and Liabilities, including product Liability,

Integrated Practical Guidance
Expert prepared guidance, including Perspectives, Elements of the Clause, and Considerations, provide context and insights at the clause level

Contact us at 1-800-638-8437 to learn more. Visit WoltersKluwerLR.com/securities to schedule a free demo.