

# Boilerplate Contract Clauses

(...aren't they a drag!?!)



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## The University of Texas School of Law – 41<sup>st</sup> Annual Corporate Counsel Institute May 16-17, 2019

Speaker: Marc Krasney – Vice President & General Counsel, PS Lightwave, Inc.

### SAMPLE CONTRACT CLAUSES HANDOUT

#### *Term and Termination*

- A. This Agreement shall commence on the Effective Date and shall continue in full force and effect for one (1) year, unless extended by mutual written agreement of the Company and Customer.
- B. Either Party may terminate this Agreement at any time with or without cause by giving thirty (30) days prior written notice.
- C. Either Party may terminate this Agreement at any time in the event of a material breach by the other Party that remains uncured after: (i) in the event of a monetary breach, [five (5)] calendar days following written notice thereof; and (ii) in the event of a non-monetary breach, [ten (10)] calendar days following written notice thereof. Such termination shall be effective immediately and automatically upon the expiration of the applicable notice period, without further notice or action by either Party. Termination shall be in addition to any other remedies that may be available to the non-breaching Party.
- D. Notwithstanding anything to the contrary contained herein, this Agreement shall terminate automatically and without notice upon the occurrence of any of the following events, each of which shall be deemed to be an incurable breach of this Agreement: (i) either Party's dissolution, termination of existence, insolvency or bankruptcy; (ii) the appointment of a receiver of any part of the property of either Party; (iii) an assignment for the benefit of creditors by either Party; (iv) the filing by either Party of a petition in bankruptcy or under any insolvency laws or any laws related to the relief of debtors, readjustment of indebtedness or reorganization of such Party; (v) either Party's failure to make repayment of its obligations for borrowed money; or (vi) either Party's failure to comply with any law with respect to conduct related to this Agreement, or engaging in any practice with respect to the products determined to be illegal or an unfair trade practice. This Agreement shall terminate immediately and automatically upon any determination by a court of

competent jurisdiction that either Party is excused or prohibited from performing in full all obligations hereunder, including, without limitation, rejection of this Agreement pursuant to 11 U.S.C. §365).

### **Assignment**

- A. **No Assignment or Delegation of Duties.** The rights and duties under this contract may not be assigned, delegated or novated. The parties hereby agree (1) not to assign their rights or delegate their duties, and (2) the parties further agree to surrender any power to assign their rights or delegate their duties as of the moment of formation of this contract. Any attempt by either party to assign any right or delegate any duty under this contract shall be null and void.
- B. **Limited Rights to Assign.** Neither this Agreement, nor any right or interest herein, may be assigned, in whole or in part, without the express written consent of the other party, which consent will not be unreasonably withheld. Contractor shall not outsource or subcontract any of its duties hereunder to any other party without the prior written consent of Company. Notwithstanding the foregoing, Company may assign this Agreement to any affiliated company without Contractor's consent, or if the assignment is carried out as part of a merger, restructuring, or reorganization, or sale or transfer of all or substantially all of Company's assets.
- C. **Consent Required to Assign.** Neither party may assign this Agreement without the prior written consent of the other party. Consent shall not be unreasonably withheld.
- D. **No Assignment to Competitors, Entity Harmful to Reputation, Entity Lacking Sufficient Assets.** This Agreement will be binding upon and inure to the benefit of the parties, their respective personal representatives, and permitted successors and assigns. Customer may not assign or otherwise transfer any of its rights or delegate any of its duties under this Agreement without the prior written consent of Company, such consent not to be unreasonably withheld, but in no event to any entity which (a) Company considers a competitor, (b) could harm Company reputation, or (c) lacks sufficient assets to meet the obligations hereunder. Company reserves the right, at its sole discretion, to assign or transfer any of its rights and delegate any of its duties hereunder, in whole or in part, to any direct or indirect subsidiary of Company. Each party will respond to any written request for consent from the other party within 30 days of receipt of such request, failing which consent will be deemed granted.
- E. **Assignments to Subsidiaries and Affiliates Permitted.** Company reserves the right to assign or sublet the whole or part of its rights, liabilities and obligations under this Agreement (if any) to a Company Subsidiary or Affiliate, its advisers, agents and representatives upon the same terms and conditions as those agreed between the parties without the consent of the Customer and to any third party with the consent of the Customer, such consent not to be unreasonably withheld.

**Venue and Choice of Law.** This Agreement shall be governed by the laws of the State of Texas without regard to its conflict of laws principles. The parties hereby agree that any action arising out of this Agreement will be brought solely in any state or federal court located in Harris County, Texas. Both parties hereby submit to the exclusive jurisdiction and venue of any such court. The parties waive any challenge

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