

기술이전, License, 생산위수탁 계약서에서 Royalty Payment 관련 영문계약 조항 샘플 -

독점권 대가 고정액 구조



18. LICENSE AND EXCLUSIVITY COMPENSATION.

18.1 **Payments;** Extension of Exclusivity Period.

(a) **Upfront License Fee and Prepayment.** Hospira shall within [*] after the Effective Date (and in any event, before December 30, 2011) pay to CyDex a non-refundable upfront license fee of \$500,000, in consideration of the rights granted Hospira under this Agreement. In addition, Hospira shall within [*] after the Effective Date (and in any event, before December 30, 2011) pay to CyDex \$2,500,000 by wire transfer as a one-time materials purchase prepayment usable only as a cumulative \$2,500,000 credit toward future

purchases of Captisol hereunder. Such credit shall be applied to the first \$2,500,000 of Captisol purchased hereunder, until exhausted. In the event that this Agreement is terminated, then to the extent so provided in Section 11.4 CyDex shall immediately make a payment to Hospira in the amount of any such remaining prepayment credit.

(b) **Extension of Exclusivity Period.** To retain the benefits of having the Exclusivity Period remain in force for additional time, Hospira shall have the option to extend one or more times the expiration date of the Exclusivity Period. Not more than [*] before and not less than [*] before the Exclusivity Period would otherwise expire (taking into account any previous proper extension or extensions of the Exclusivity Period pursuant to this Section 4.1(b)), CyDex shall deliver to Hospira written notice that the Exclusivity Period is set to expire. Hospira may, in its sole discretion, extend the Exclusivity Period by making a non-refundable payment, by wire transfer, of \$[*] to CyDex within [*] after the receipt of CyDex's notice. Each such extension shall extend the erstwhile expiration date of the Exclusivity Period for [*] beyond when it would otherwise have expired. For avoidance of doubt: (i) such option to extend can be exercised in compliance with this Section 4.1(b) multiple times, but no extension can extend the Exclusivity Period beyond the end of the Term, (ii) if CyDex does not provide notice to Hospira at least [*] before the end of the then current

term of the Exclusivity Period, the Exclusivity Period will automatically extend for [*] after Hospira's receipt of any such notice and Hospira shall have the right to further extend the Exclusivity Period as set forth above by making the required payment within [*] after receipt of CyDex's notice, and (iii) the Exclusivity Period cannot be resuscitated after it has expired or terminated.

18.3 **Taxes**. All amounts due hereunder exclude all applicable sales, use, and other taxes and duties, and Hospira will be responsible for payment of all such taxes (other than taxes based on CyDex's income), arising from the payment of amounts due under this Agreement. The parties agree to cooperate with one another and use reasonable efforts to avoid or reduce tax withholding or similar obligations in respect of payments made by Hospira to CyDex under this Agreement. To the extent Hospira is required to deduct and withhold taxes on any payment to CyDex, Hospira shall pay the amounts of such taxes to the proper governmental authority in a timely manner and promptly transmit to CyDex official receipts issued by the appropriate taxing authority and/or an official tax certificate, or such other evidence as CyDex may reasonably request, to establish that such taxes have been paid. CyDex shall provide Hospira any tax forms that may be reasonably necessary in order for Hospira to not withhold tax or to withhold tax at a reduced rate under an applicable

bilateral income tax treaty. CyDex shall use reasonable efforts to provide any such tax forms to Hospira at least [***] before the due date for any payment for which CyDex desires that Hospira apply a reduced withholding rate. Each party shall provide the other with reasonable assistance to enable the recovery, as permitted by applicable law, of withholding taxes, value added taxes, or similar obligations resulting from payments made under this Agreement, such recovery to be for the benefit of the party bearing such withholding tax or value added tax.

19. **RECORDS; AUDIT.**

19.1 Records and Reports.

(a) **Records.** During the Term and for a period of [*], Hospira shall, and shall require its Affiliates to, maintain accurate records relating to Net Sales of the Finished Product.

(b) **Reports.** During the Term, Hospira shall provide CyDex with written a report that identifies whether each respective Section 4.1(c) milestone has been achieved.

19.2 **Audit**. Upon reasonable prior notice, such Section 5.1 records shall be available during regular business hours for examination and audit at the expense of CyDex by an independent certified public accountant selected by CyDex and reasonably acceptable to Hospira, for the sole purpose of verifying Net Sales. CyDex shall [*]. Such records may not be audited more often than [*] and the records for any period may not be audited more than once. During any audit, the scope of such audit shall only include, with respect to those items of deduction for which Hospira, under its then-current system, calculates using a fixed allocation system, a review of actual allocated deductions thereunder unless and until such time as Hospira has changed its system to reflect actual deductions for such category of deductions. In the event that Hospira begins tracking actual costs and deductions on a product by product basis generally (which it has no obligation to do hereunder), Hospira will implement such actual tracking for purposes of this Agreement in lieu of fixed allocation percentages and the calculation of such actual costs and deductions shall thereafter become subject to audit pursuant to this Section 5.2. All information learned in the course of any audit or inspection under this Section 5.2 shall be deemed to be Confidential Information of Hospira, subject to the terms and provisions of Section 7 below.

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

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