

국제계약서 중 비밀보호계약, 비밀유지약정, NDA, CDA 조항 – 비밀정보 범위, 적용 배제 대상, 비밀유지 의무, 위반시 조치 등 계약조항 샘플



13. CONFIDENTIALITY.

13.1 Confidential Information, Defined; Exclusions.

(a) **Definition of Confidential Information.**

The term “Confidential Information” means, with respect to a Disclosing Party, information and material, regardless of the form in which that information or material is constituted, any and all regulatory, technical, manufacturing, business, financial, operational, administrative, marketing or economic information, data, documents, designs, patents, materials, product samples, and Know-How asserted by such Disclosing Party as being confidential to it and disclosed by the Disclosing Party to the Receiving Party, whether orally, in writing, or in pictorial form in hard copy, electronic form or in any other form, in

connection with the performance of this Agreement by the Parties, marked in English, or otherwise identified, as confidential or proprietary or secret.

(b) **Exclusions.**

The term "Confidential Information" does not apply to any portion of information or materials that a Receiving Party can demonstrate by contemporaneous written records was:

(i) known to the general public at the time of its disclosure to the Receiving Party, or thereafter became generally known to the general public, other than as a result of actions or omissions of the Receiving Party or anyone to whom the receiving Party disclosed such information or materials; (ii) known by the Receiving Party prior to the date of disclosure by the Disclosing Party; (iii) disclosed to the Receiving Party on an unrestricted basis from a source unrelated to the Disclosing Party and not under a duty of confidentiality to the Disclosing Party; or (iv) independently developed by the Receiving Party by personnel that did not have access to or use of Confidential Information of the Disclosing Party. Any combination of features or disclosures shall not be deemed to fall within the foregoing exclusions merely because individual features are published or known to the general public or in the rightful possession of the Receiving Party unless the combination itself and

principle of operation thereof are published or known to the general public or are in the rightful possession of the Receiving Party.

13.2 **Degree of Care.**

Each Party shall take Commercially Reasonable Efforts to maintain the confidentiality of the Confidential Information of the other Party, which steps shall be no less protective than those steps that such Party takes to protect its own information and materials of a similar confidential nature, but in no event less than a reasonable degree of care. Neither Party shall use or permit the use of any Confidential Information of the other Party except for the purposes of carrying out its obligations or exercising its rights under this Agreement, and neither Party shall copy any Confidential Information of the other Party except as may be reasonably useful or necessary for such purposes. All Confidential Information of a Party, including without limitation all copies and derivations thereof, is and shall remain the sole and exclusive property of such Party and subject to the restrictions provided for herein. Neither Party shall disclose any Confidential Information of the other Party other than as permitted under this Agreement.

13.3 Required Disclosures.

The obligations of Sections 13.2 and 13.7 shall not apply to the extent that the Receiving Party:

(a) is required to disclose Confidential Information it receives pursuant to (i) an order of a court of competent jurisdiction, (ii) Applicable Laws, (iii) regulations or rules of a securities exchange, including without limitation as required in connection with a public offering of the Receiving Party's stock or to comply with regulations imposed by the United States Securities and Exchange Commission, NASDAQ, or stock exchange disclosure requirements, or (iv) requirement of a governmental agency for purposes of obtaining approval to test or market the Product; provided that, in the case of clauses (i) through (iv) of this subsection (a), the Receiving Party shall provide prior written notice thereof to the Disclosing Party and, where practicable, reasonable opportunity for the Disclosing Party to review and comment on such required disclosure and request confidential treatment thereof or a protective order therefore in a reasonably timely manner, or

(b) discloses such Confidential Information to Affiliates, potential or actual acquirers, merger partners, external advisors, licensees, sublicensees, assignees, subcontractors, investment bankers, investors, lenders, venture capital firms, investment bankers, or other potential financial partners, and their and each of the Parties' respective directors, employees, contractors, and agents; provided that such any such person or entity listed in the first part of this subsection (b) agrees to confidentiality and nonuse obligations with respect thereto at least as stringent as those specified in Section 13.2.

13.4 **Permitted Disclosures.**

At each Receiving Party's request, the Disclosing Party shall review and approve in good faith the use by the Receiving Party any packet of Confidential Information of the Disclosing Party that the Receiving Party proposes to disclose, under commercially reasonable confidentiality obligations that are less stringent than those specified in Section 13.2 to actual or potential investment bankers, investors, lenders, venture capital firms, investment bankers, or other potential financial partners, and their and the Receiving Party's respective directors, employees, contractors, and agents for purposes of raising capital.

13.5 **Irreparable Injury.**

The Parties acknowledge that either Party's breach of this Article 13 would cause the other Party irreparable injury for which it would not have an adequate remedy at law. In the event of a breach of this Article 13, the nonbreaching Party may seek injunctive relief, whether preliminary or permanent, in addition to any other remedies it may have at law or in equity, without necessity of posting a bond.

13.6 **Return of Confidential Information.**

Each Receiving Party shall return or destroy, at the Disclosing Party's instruction, all Confidential Information of the Disclosing Party in the Receiving Party's possession upon termination or expiration of this Agreement, except any Confidential Information that is necessary to allow the Receiving Party to perform or enjoy any of its rights or obligations that expressly survive the termination or expiration of this Agreement.

13.7 **Public Disclosure.**

(a) The Parties agree that the initial public announcement of the execution of this Agreement shall be in the form set forth on Exhibit 13.7 (the "Press Release").

(b) During the term of this Agreement, in all cases other than the announcement set forth in the Press Release, Licensor and Licensee shall submit to each other in a reasonably timely manner for review and approval all proposed press releases involving medical or scientific information, academic, scientific, and medical Publications and public presentations, including without limitation any and all abstracts, public presentations at congresses or scientific meetings or other public meetings, and any Publication manuscripts, relating to the Product, the Nocturia Indication, the PNE Indication and any Additional Indication that have not been previously publicly disclosed and that are not otherwise permitted to be disclosed under this Article 13. Such review and approval shall be conducted in a timely manner for the purposes of preserving intellectual property protection and determining whether any portion of the proposed publication or

presentation containing the Confidential Information of either Party should be modified or deleted. Notwithstanding the foregoing and for clarity sake, this provision shall not apply for any disclosures or releases required by the SEC or any other Regulatory Authority, which such disclosures and releases will be subject to Section 13.3.

(c) Effect on Existing Confidentiality Agreement. The provisions of this Article 13 do not supersede that certain letter agreement, dated April 3, 2017, between Licensor and Licensee.

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