

국제계약서의 비밀보호, 비밀유지, confidentiality 조항, NDA, CDA의 주요내용 영문 샘플

- 비밀정보 범위, 적용 배제대상, 비밀유지 의무, 위반시 손해배상 등 조치



21. CONFIDENTIALITY.

21.1 Definition.

Hospira and CyDex each recognizes that, during the Term, it may be necessary for a party (the "Disclosing Party") to provide Confidential Information (as defined herein) to the other party (the "Receiving Party") that is highly valuable, the disclosure of which would be highly prejudicial to such party. The disclosure and use of Confidential Information will be governed by the provisions of this Section 7. Neither Hospira nor CyDex shall use the

other's Confidential Information except as expressly permitted in this Agreement. For purposes of this Agreement, "Confidential Information" means all information disclosed by the Disclosing Party to the Receiving Party in any form whatsoever, including but not limited to product specifications, data, know-how, formulations, product concepts, sample materials, business and technical information, financial data, batch records, trade secrets, processes, techniques, algorithms, programs, designs, drawings, and any other information related to a party's present or future products, sales, suppliers, customers, employees, investors or business. Without limiting the generality of the foregoing, CyDex's Confidential Information includes all materials provided as part of the Captisol Data Package.

21.2 **Obligation.**

CyDex and Hospira agree that they will disclose the other's Confidential Information to its (or its respective Affiliates') own officers, employees, consultants and agents only if and to the extent reasonably necessary to carry out their respective responsibilities under this Agreement or in accordance with the exercise of their rights under this Agreement, and such disclosure shall be limited to the extent reasonably possible consistent with such responsibilities and rights. Except as provided in the previous sentence, neither party shall

disclose Confidential Information of the other to any Third Party without the other's prior written consent. Any disclosure to a Third Party shall be pursuant to the terms of a non-disclosure agreement substantially similar to the requirements of this Section 7. The party which disclosed Confidential Information of the other to any Third Party shall be responsible and liable for any disclosure or use by such Third Party (or its disclosees) which would have violated this Agreement if committed by the party itself. Neither party shall use Confidential Information of the other except as expressly allowed by and for the purposes of this Agreement. Each party shall take such action to preserve the confidentiality of each other's Confidential Information as it would customarily take to preserve the confidentiality of its own Confidential Information (but in no event less than a reasonable standard of care). Unless otherwise specified in this Agreement and subject to terms and conditions in this Agreement, if so requested by the other party a party shall promptly return all relevant records and materials in its possession or control containing or embodying the other party's Confidential Information (including all copies and extracts of documents); provided, however, that each party may retain one archival copy (and such electronic copies that exist as part of the party's computer systems, network storage systems and electronic backup systems) of such records and materials solely to be able to monitor its obligations that survive under this Agreement.

21.3 **Exceptions.**

The use and non-disclosure obligations set forth in this Section 7 shall not apply to any Confidential Information, or portion thereof, that the Receiving Party can demonstrate by appropriate documentation:

(a) at the time of disclosure is in the public domain;

(b) after disclosure, becomes part of the public domain, by publication or otherwise, through no fault of the Receiving Party or its disclosees;

(c) is independently developed by Receiving Party personnel with no reference or access to the Confidential Information; or

(d) is made available to the Receiving Party by an independent third party without obligation of confidentiality, provided, however, that to the Receiving Party's knowledge, such information was not obtained by said third party, directly or indirectly, from the Disclosing Party hereunder.

In addition, the Receiving Party may disclose information to a court or ADR forum in the

process of seeking to enforce through such court or ADR forum its own rights under this Agreement, and also may disclose information that is required to be disclosed by law, by a valid order of a court or by order or regulation of a governmental agency including but not limited to, regulations of the Securities and Exchange Commission, or in the course of litigation, provided that in all cases the Receiving Party shall give the other party prompt notice of the pending disclosure and make a reasonable effort to obtain, or to assist the Disclosing Party in obtaining, a protective order or confidential-treatment order preventing or limiting (to the greatest possible extent and for the longest possible period) the disclosure and/or requiring that the Confidential Information so disclosed be used only for the purposes for which the law or regulation required, or for which the order was issued.

21.4 **Injunction.**

Each party agrees that should it breach or threaten to breach any provisions of this Section 7, the Disclosing Party will suffer irreparable damages and its remedy at law will be inadequate. Upon any breach or threatened breach by the Receiving Party of this Section 7, the Disclosing Party shall be entitled to seek from any court of competent jurisdiction temporary, preliminary and/or permanent injunctive relief in addition to any other remedy

which it may have, without need to post any bond or security, in addition to any and all other legal and equitable rights and remedies available to the Disclosing Party.

21.5 **Public Announcements.**

If a press release is required by law or the applicable rules of a national securities exchange to be issued upon execution of this Agreement or reasonably soon thereafter, the parties will mutually agree on such a press release. Neither party shall make any subsequent public announcement concerning this Agreement or the terms hereof not previously made public without the prior written approval of the other party with regard to the form, content, and precise timing of such announcement, except as may be required to be made by either party in order to comply with applicable law, regulations, court orders, or tax or securities filings. Such consent shall not be unreasonably withheld or delayed by such other party. Before any such public announcement, the party wishing to make the announcement will submit a draft of the proposed announcement to the other party in sufficient time to enable such other party to consider and comment thereon. The parties agree that a party may disclose this Agreement's existence and terms, and material developments or material information generated under this Agreement, in (i) securities filings with the Securities and

Exchange Commission (or equivalent foreign agency) to the extent required by law, or (ii) under conditions of confidentiality/nonuse in connection with investment and similar corporate transactions. Notwithstanding the above, once a public announcement has been made, either party shall be free to disclose to third parties any information contained in said public announcement.

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