

# Captisol Free Sample: Terms & Conditions

You should carefully read the following terms and conditions before requesting to receive any samples of Captisol – research grade (“Samples”). CyDex Pharmaceuticals, inc. (“CyDex”) is only willing to provide samples to you on these terms and conditions. Any use of the samples will confirm your agreement to be bound by these terms and conditions. If you do not wish to be bound to these terms and conditions, do not submit any request to receive any samples.

## 1. GRANT OF RIGHTS

You hereby covenant and agree to use the Samples for the sole and limited purpose of conducting pre-clinical non-human formulation studies using the Samples (“Intended Use”). It is expressly understood that CyDex has no obligation to enter into any agreement, or on any particular terms and conditions, for the licensing/supply of any Captisol to You for any stages or activities beyond the Intended Use unless the parties enter into a separate agreement, and that any legally binding commitment between the parties as to any such further arrangement shall be set forth in one or more written, definitive agreements duly executed by the parties; You assume and accept the risk associated with this freedom of CyDex to enter or not enter into such a further arrangement with You.

## 2. RESTRICTIONS ON USE

You hereby represent, warrant, covenant and agree that (a) You shall use the Samples (i) in compliance with all applicable laws, statutes and regulations and (ii) solely for the Intended Use; (b) You shall not (and shall not permit or facilitate anyone else to): (i) attempt to reverse engineer, deconstruct or in any way improve, modify, or determine the structure or composition of the Sample, (ii) make any regulatory filing related to the Sample (including any confidential information shared by CyDex, if any), (iii) transfer the Sample to any third party, (iv) use the Samples in any studies, in animals or in humans (including without limitation in a human clinical trial), or (v) use the Samples for diagnostic purposes; and (c) You shall not permit or facilitate anyone else to use the Samples.

## 3. PROPRIETARY RIGHTS; LIMITED USE LICENSE

Notwithstanding anything to the contrary, CyDex shall remain the sole and exclusive owner of Captisol, including any and all intellectual property rights related thereto and the Samples provided hereunder. Neither party shall have any express or implied right in or license or option for any intellectual property rights owned or controlled by the other party, provided that CyDex hereby grants to You a non-exclusive, revocable, royalty-free limited license, without the right to sublicense or transfer, to use the Samples solely for the Intended Use. Discoveries, enhancements, improvements, derivatives, modifications, inventions and other technology, whether or not patentable, of or to any Samples, which shall include any new application or use of or for any Samples, (“Captisol Improvements”) shall be solely, fully and completely owned by CyDex irrespective of inventorship and You shall, and hereby unconditionally and irrevocably do, assign all

rights worldwide to Captisol Improvements to CyDex. You shall provide notice to CyDex within ninety (90) days after any Captisol Improvement is first conceived, discovered or otherwise invented by You or your personnel and shall execute and deliver all documents and instruments reasonably requested by CyDex to evidence or record such assignment of Captisol Improvements or to file for, perfect or enforce the assigned rights. CyDex shall have the sole and exclusive right at its cost to file patent applications claiming Captisol Improvements. Inventorship shall be determined in accordance with US patent law.

#### 4. CONFIDENTIAL INFORMATION

To the extent You receive any information related to the Samples or Captisol generally, You shall treat such information as strictly confidential to CyDex. You shall not use or otherwise disclose any such confidential information without the prior written consent of CyDex.

#### 5. NO WARRANTIES; LIMITATION OF LIABILITY

- 5.1 You knowingly take the Samples provided hereunder (including any confidential information shared hereunder) on an “AS IS” basis. **CyDex makes to you no representations or warranties of any kind, either express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose, or that the use of the samples will not infringe any rights of third parties.** CyDex shall not be liable, and You shall indemnify CyDex and its affiliates, for any claims, suits, actions, demands, liabilities, or losses, as well as any reasonable attorneys’ fees and costs, arising directly or indirectly out of from Your use, handling or storage of the Samples.
- 5.2 CyDex specifically disclaims all liability for and shall in no event be liable for any incidental, special, indirect or consequential damages, expenses, lost profits, lost savings, interruptions of business or other such damages of any kind or character whatsoever arising out of or related to the SAMPLES (including any Confidential Information shared hereunder), regardless of the form of action, whether in contract, tort, strict liability or otherwise, even if CyDex was advised of the possibility of such damages. You shall have no remedy, and CyDex shall have no liability, other than as expressly set forth in this agreement. In no event shall CyDex’s total aggregate liability for all claims arising out of or related to this agreement or the SAMPLES (including any Confidential Information shared hereunder) exceed the amounts paid by YOU for SAMPLES used for the Intended Use. **You hereby acknowledge and agree that the samples provided hereunder were free of charge.**

#### 6. RETURN OF SAMPLES

At any time and at CyDex’s sole discretion, CyDex may request that You cease using any and all Samples provided hereunder and at CyDex’s option and reasonable expense, request that You promptly return all remaining Samples.

## **7. INDEPENDENCE**

This Agreement and the activities contemplated herein are not intended to and shall not be deemed to constitute a partnership, agency, employer-employee, or joint venture relationship between the parties. Neither party shall incur any debts or make any commitments for the other party.

## **8. GENERAL PROVISIONS**

This Agreement shall be governed by and construed in accordance with California law without regard to the choice-of-law principles thereof, and is the entire agreement of the parties related to the subject matter hereof. Money damages may not be a sufficient remedy for any breach hereof, and each party shall be entitled to equitable remedies in addition to remedies at law. In any dispute arising out of this Agreement, the prevailing party shall be entitled to recover its attorney's fees and expenses in addition to any and all other available relief. No amendment or waiver of any provision of this Agreement will be effective unless in a writing signed by the parties. You shall not assign its rights or delegate its duties hereunder without the written consent of CyDex, and any attempt by You to do so shall be voidable by CyDex ab initio. CyDex shall have the right to sell, transfer, assign, delegate, pledge, or otherwise dispose of, whether voluntarily, involuntarily, by operation of law or otherwise, this Agreement, in whole or part, without obtaining Your consent. This Agreement is severable; the illegality or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any of the other provisions hereof. Notices to CyDex shall be sent to 3911 Sorrento Valley Blvd, Suite 110, San Diego, CA 92121, USA; Attention Chief Legal Officer. Notices to You shall be sent to contact information you submitted when requesting for the Samples.