

## **GENERAL TERMS AND CONDITIONS OF CONTRACT FOR VIVOMICX B.V**

### **1. DEFINITIONS**

In these General Terms and Conditions:

- 1.1. **Agreement** any oral or written agreement between Vivomicx and the Customer, under which Vivomicx has agreed to provide Services to the Customer.
- 1.2. **Customer** the natural or legal person with whom Vivomicx has entered into, or intends to enter into an Agreement.
- 1.3. **Party** Vivomicx and the Customer(s), together the “Parties” that have entered into an Agreement.
- 1.4. **Results** all data generated by Vivomicx on behalf of the Customer, other than Vivomicx Intellectual Property.
- 1.5. **Samples** pre-clinical or clinical samples provided by the Customer.
- 1.6. **Services** all the activities to be performed by Vivomicx under the Agreement, including, but not limited to:
  - a) Checking the Samples’ biomolecule integrity;
  - b) Determining the Samples’ histological quality;
  - c) Gene expression profile analysis of tissue compartments of tissues from healthy, diseased and treated conditions;
  - d) Biomarker detection and validation;
  - e) Consultancy in selecting proper reference genes for cells under study.
- 1.7. **Vivomicx** Vivomicx B.V., the user of these General Terms and Conditions, with registered office in Groningen, listed in the Trade Register under Chamber of Commerce number 60023961.

### **2. GENERAL PROVISIONS**

- 2.1. These General Terms and Conditions apply to any and all offers made by Vivomicx, and any Agreement between Vivomicx and the Customer, insofar as Parties have not deviated, expressly and in writing, from the contents of these General Terms and Conditions.
- 2.2. These General Terms and Conditions supersede any and all prior oral and written quotations, communications, agreements and understandings of the Parties.
- 2.3. Any communication or conduct of the Customer which confirms an Agreement with Vivomicx, as well as the Customer’s acceptance of any Service from Vivomicx shall constitute its acceptance of these General Terms and Conditions.
- 2.4. By entering into an Agreement on the basis of these General Terms and Conditions, the Customer agrees to the applicability thereof in respect of future Agreements, even if this is not expressly stated.

### **3. OFFER AND FORMATION OF THE AGREEMENT**

- 3.1. Unless explicitly stated otherwise, all offers, quotations and estimates by Vivomicx are non-binding. The Agreement shall take effect as soon as the Agreement made between the Parties has been signed by the Customer and Vivomicx. If, and insofar as Vivomicx has not yet received the signed Agreement, then the Agreement will be considered as concluded under these General Terms and Conditions, as soon as Vivomicx has started to perform any Services at the Customers request, orally or in writing.
- 3.2. Any information with regard to expected Results or performance supplied through the offer of Vivomicx is indicative and not binding.

### **4. CUSTOMERS OBLIGATIONS**

- 4.1. Customer shall timely and appropriately provide Vivomicx with any and all documentation, information and Samples that Vivomicx requires for the proper and timely performance of the Services under the Agreement.
- 4.2. Customer guarantees that any and all Samples, documents and information is provided to Vivomicx in accordance with the Dutch Act on Medical Research Involving Human Subjects, Medical Treatment Agreements Act and the Personal Data Protection Act, if applicable.
- 4.3. Customer guarantees the accuracy, completeness and reliability of the information and documentation provided to Vivomicx, even if this information has been obtained from third parties.
- 4.4. Any additional costs and/or damage caused by a delay in the execution of the Agreement as result from the Customer’s failure to (timely) provide Vivomicx with the requested information, documentation and/or Samples will be borne by the Customer.

### **5. SAMPLES**

- 5.1. Samples shall be delivered to Vivomicx at the Customer’s responsibility.
- 5.2. Vivomicx shall be entitled to reject Samples if, in Vivomicx’ sole discretion, the Samples are not appropriate and/or the quality of the Samples is not sufficient.
- 5.3. The Samples that may be rejected by Vivomicx include but are not limited to (i) Samples that have been transported or stored under inappropriate environmental conditions (ii) Samples that do not pass the Vivomicx RNA integrity check.
- 5.4. In case a failure renders the Sample unsuitable under the responsibility of Vivomicx (during sample processing), the analysis will not be charged and the Samples will be returned to the Customer free of charge. In case a Sample is unsuitable for reasons for which Customer is responsible, the costs incurred by Vivomicx (e.g. analysis of the sample) will be charged to the Customer.

### **6. EXECUTION OF THE ENGAGEMENT**

- 6.1. Vivomicx will carry out all Services with reasonable skill, care and diligence, in accordance with the Agreement, and professional standards.
- 6.2. Vivomicx shall carry out its obligations under the Agreement with due observance of the applicable

- (inter)national laws and regulations. Vivomicx shall not, under any circumstance, be required to commit any act or omission that is in conflict or incompatible with the aforementioned laws and regulations.
- 6.3. Customer acknowledges that Vivomicx cannot guarantee that the Services will always be performed to a result or a correct result and that Vivomicx does not provide any guarantee that the Results will be suitable for Customer's purposes or that the Results will not infringe third party's intellectual property rights. All use of the Results by Customer is at the sole responsibility of Customer.
- 7. CONFIDENTIALITY**
- 7.1. Vivomicx shall keep secret, and shall not disclose any information of a confidential nature and/or personal data ("**Confidential Information**") of the Customer obtained in relation to the Agreement or during its execution. Vivomicx shall procure that its employees will keep secret and not disclose such Confidential Information.
- 7.2. The foregoing shall not apply to Confidential Information which (i) is or becomes part of the public domain without fault on the part of Vivomicx; (ii) was already known by Vivomicx, other than under an obligation of confidentiality, at the time of disclosure by the Customer; (iii) is lawfully acquired by Vivomicx from a third party on a non-confidential basis; or (iv) confidential information that Vivomicx is required to disclose pursuant to any law, lawful governmental, quasi-governmental, judicial order or legal process.
- 7.3. Customer allows Vivomicx within the scope of the Agreement to process Confidential Information concerning the Customer and/or its employees, affiliates and Customers or third parties, and allows Vivomicx, under confidentiality, to share the Confidential Information with (i) Vivomicx's employees that have a need to know in view of the Services, (ii) Vivomicx's insurers or legal or financial advisers and (iii) if required, and only with Customer's consent, third parties involved in the execution of the Agreements.
- 7.4. Vivomicx will process any personal data of the Customer in accordance with the applicable (inter)national laws and regulations concerning the protection of personal data.
- 7.5. Customer will not disclose any of Vivomicx's Confidential Information or provide third parties with any information concerning the Agreement, the content of reports, opinions or any other written or oral statements issued by Vivomicx without its prior, written consent, except if required by (inter)national laws or regulations.
- 7.6. Parties will impose their obligations under this Article 7, to any third party engaged by them.
- 8. INTELLECTUAL PROPERTY**
- 8.1. All improvements to Vivomicx background technology and all files, software, data and information developed or provided by Vivomicx, and any know-how, methodologies, or processes used or developed by Vivomicx to provide its Services to the Customer under the Agreement that are of general applicability, and any copyrights, trademarks, patents, trade secrets, or any other proprietary rights thereon ("**Vivomicx Intellectual Property**") remain the sole and exclusive property of Vivomicx, or the third parties engaged by Vivomicx.
- 8.2. Customer is explicitly prohibited to reproduce, publish or use for commercial purposes any Vivomicx

Intellectual Property of Vivomicx without Vivomicx' prior written consent.

- 8.3. Customer has the right to use the Results of the Services performed, fully and freely, from the moment that the Results have been made available to the Customer.

**9. FEES AND EXPENSES**

- 9.1. Customer shall pay to Vivomicx the fees specified in the Agreement.
- 9.2. Fees specified in the Agreement do not include (i) costs for transport and delivery (ii) expense claims filed by third parties engaged by Vivomicx and approved in advance by Customer, (iii) value added tax and (iv) other government levies, unless stated otherwise in the Agreement. Customer will reimburse Vivomicx for such additional expenses.
- 9.3. If, between the signing of the Agreement and its completion, any parameter relevant to the calculation of the fee will be subject to change, Vivomicx will have the right to adjust the fee accordingly.
- 9.4. Unless otherwise stated in the Agreement, payment will be made, without any deduction, discount or debt settlement, within thirty (30) days of receipt of an invoice, submitted monthly in arrears, for Services performed. Payment shall be into the bank account mentioned in the invoice.
- 9.5. Customer will pay a late fee of one percent (1%) per month or the highest rate allowed under the law, whichever is lower, on any overdue amounts. Customer also agrees to pay Vivomicx all reasonable costs and expenses of collection, including attorneys' fees.
- 9.6. If any facts or circumstances give Vivomicx good reason to fear that the Customer will not fulfil its obligations under the Agreement, or will not fulfil them (or have them fulfilled) in full, the Customer shall, immediately at the request of Vivomicx provide sound security (in the form of pledge, surety or otherwise) for the payment(s) owed and/or make an advance payment. If the Customer fails to provide such a security or advance payment, Vivomicx has the right to immediately suspend (further) execution of the Agreement, and all amounts owed by the Customer will become immediately due and payable.
- 9.7. In the event of a jointly commissioned Agreement, all Customers are jointly and separately liable for payment of the full fee charged under the Agreement.

**10. COMPLAINTS**

- 10.1. Customer must notify Vivomicx in writing of any complaints relating to the Services performed and/or the invoice amount within 14 days of the date of dispatch of documents or information in respect of which a complaint is filed.
- 10.2. Complaints as referred to in Section 10.1 shall not suspend the Customer's obligation to pay any fee, or additional costs, due. The Customer is not entitled, by virtue of a complaint in respect of a certain Service, to defer or refuse payment for other Services provided by Vivomicx to which the complaint does not relate.
- 10.3. If Customer files a timely complaint which is acknowledged by Vivomicx and within the 30 (thirty) day period following receipt of the complaint, no consensus is achieved about a reasonable adjustment in the execution of the Agreement or an adjustment of the fee charged, the issue will be offered for binding arbitration by an arbitration board consisting of three members: one member to be selected by Vivomicx, one

member to be selected by Customer and an independent member mutually agreeable to the Parties. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable fees, if any.

## **11. DELIVERY PERIOD**

- 11.1. If Vivomicx requires an advance payment or requires information, documentation or Samples to be made available by the Customer in order to execute the Agreement, term(s) for the completion of the Service(s) will not take effect until the advance payment has been made in full or until all information or Samples have been made available by the Customer.
- 11.2. Any times or dates set forth in the Agreement for provision or completion by Vivomicx of the Services are estimates and no strict deadlines, unless this has been agreed upon in advance and in writing.

## **12. TERM AND TERMINATION**

- 12.1. Except as otherwise provided in the Agreement, the Agreement shall expire at the moment that all Services have been executed and completed, unless the Agreement is terminated as provided in Section 12.2 or 12.3.
- 12.2. Each Party may terminate the Agreement without cause upon 1 (one) month prior written notice.
- 12.3. Either Party may forthwith terminate this Agreement upon prior written notice upon
  - i. the breach of any material provision of this Agreement by the other Party if (a) such breach is not curable or (b) if curable, the breaching Party has not cured such breach within 30 (thirty) day period following receipt of a written notice by the non-breaching Party substantiating such breach ("*ingebrekestelling*").
  - ii. the filing or institution of bankruptcy, liquidation or receivership proceedings of the other Party or in the event a receiver or custodian is appointed for the other Party's business, or if its business is discontinued.
- 12.4. If the Customer chooses to terminate the Agreement prior to its completion, the Customer is obliged to pay the fee for any Services performed by Vivomicx until the effective date of termination. In the event that Customer chooses to terminate the Agreement prior to its completion pursuant to Section 12.2, the Customer shall, furthermore, reimburse to Vivomicx all (out of pocket and internal) costs that will be reasonably incurred by Vivomicx after the effective date of termination of the Agreement pursuant to commitments entered into by Vivomicx prior to the effective date of termination including costs of personnel that Vivomicx has allocated to provide the Services that cannot be re-allocated to other projects, provided, however, that Vivomicx will use commercially reasonable efforts to mitigate such costs..
- 12.5. In the event that Vivomicx chooses to terminate the Agreement prior to its completion pursuant to Section 12.2, the Customer is entitled to reasonable assistance in the transfer of the Services to third parties, if any, subject, however, to Article 8.
- 12.6. The terms of Article 7 of these General Terms and Provisions shall survive 5 (five) years after termination

or expiration of the Agreement. Articles 8, 10, 13 and 15 shall survive for an indefinite period of time. In addition, any other provisions which are required to interpret and enforce the Parties' rights and obligations under the Agreement shall also survive any termination or expiration of this Agreement, but only to the extent required for the full observation and performance of the Agreement.

- 12.7. At request of the Customer, Vivomicx will return all information, documentation and Samples provided by the Customer upon termination or completion of the Agreement, at the Customer's expense.

## **13. LIABILITY AND INDEMNIFICATION**

- 13.1. Vivomicx will indemnify and hold harmless the Customer from, and against any and all loss, claim, damage, liability or expense (including reasonable attorney's fees) caused by the performance of Vivomicx in the execution of the Agreement unless such losses, claims or damages results from negligence or wilful misconduct on the part of the Customer.
- 13.2. Vivomicx shall never be liable for any indirect damage, including lost profits, and damage due to the stagnation of business operations.
- 13.3. Save for gross negligence or wilful misconduct of Vivomicx or its officers, any and all liability of Vivomicx (including its indemnification obligation) is limited to an amount equal to once the fee paid or owed by the Customer for the specific Service from which the liability arises. In the event of an agreement with a duration longer than 12 (twelve) months, the liability of Vivomicx is limited to the fees paid by the Customer for the specific Service from which the liability arises over the 12 (twelve) months preceding the damage occurring event. In any event, a claim will be unenforceable and lapse unless Vivomicx receives a written notice thereof no later than 6 (six) months after the discovery of an event or circumstance that gives or may give rise to that claim.
- 13.4. Any and all Agreements are accepted and executed exclusively by Vivomicx or on its behalf. Any right of indemnification or action by the Customer should be brought directly and exclusively to Vivomicx.
- 13.5. Customer will indemnify, and hold harmless Vivomicx from, and against any and all loss, (third-party) claims, damage, liability or expense (including reasonable attorney's fees) caused by:
  - a) any inaccuracy or incompleteness in the information provided by it or on its behalf;
  - b) a delay in the delivery of the documentation, information, Samples or personal data provided by it, or on its behalf;
  - c) any other failure in the performance of the obligations of the Customer under the law, these General Terms and Conditions or the Agreement;
  - d) circumstances which cannot be attributed to Vivomicx otherwise;
  - e) use of the Results by on or behalf of Customer.
- 13.6. Except where wilful misconduct or gross negligence of Vivomicx is concerned, the Customer shall indemnify Vivomicx against all third party claims on any grounds whatsoever in respect of compensation for damages, costs or interest, directly or indirectly related to the performance of the Agreement.
- 13.7. Neither Party shall be liable in any way for any damage, loss, cost or expense arising out of or in connection with

any delay, restriction, interference or failure in performing any obligation towards the other Party caused by any circumstance beyond its reasonable control. Upon the occurrence of any such event, the party suffering thereby shall promptly inform the other party by written notice thereof specifying the cause of the event and how it will affect its performance. The Party not affected by the force majeure is entitled to terminate the Agreement upon one month written notice.

#### **14. MISCELLANEOUS**

- 14.1. Parties may communicate with each other by electronic mail. Parties recognise the risks associated with electronic mail including, but not limited to, distortion, delays, interception, manipulation and viruses. Parties hereby declare that they shall not hold each other liable for any damage incurred by either of them as a result of the use of electronic mail. This also applies to the use of electronic communication between us and – irrespective of the form – third parties including, but not limited to the Dutch tax authorities. The Parties shall do or omit all that can reasonably be expected of them to avoid such risks. If a Party should be in doubt as to the content of an electronic message received, the content of the message originating with the sender shall be decisive.
- 14.2. The invalidity or unenforceability of any provision of this Agreement shall not affect or limit the validity or enforceability of any other provisions hereof. Any such invalid or unenforceable provision shall be replaced or deemed to be replaced by a provision that is considered to be valid and enforceable. The interpretation of the replacing provision shall be as close as possible to the intent of the invalid or unenforceable provision.
- 14.3. In case of conflict between these General Terms and Conditions and the Agreement, the provisions of the Agreement shall prevail.
- 14.4. Changes to these General Terms and Conditions can only be agreed upon in writing in the Agreement.
- 14.5. The Customer cannot assign the Agreement, or any obligation therein, to a third party without the prior written consent of Vivomicx, not to be unreasonably withheld.

#### **15. GOVERNING LAW AND JURISDICTION**

- 15.1. These General Terms and Conditions, any and all Agreements and any and all offers made by Vivomicx are exclusively governed by the law of the Netherlands.
- 15.2. Any disputes arising out or in connection with an Agreement, which cannot be solved amicably within a reasonable period of time, will be submitted to the competent court in Groningen.

#### **16. FINAL PROVISIONS**

- 16.1. These General Terms and Conditions have been filed at the office of the Trade Register of the Chamber of Commerce Groningen, The Netherlands under nr. [...], August 2015. These General Terms and Conditions can also be downloaded from the website of Vivomicx.