

## **General Conditions**

### **1.Application**

These general terms and conditions ("General Conditions") shall apply to the agreement between MEDIAGENIX Corp., 13621 NW 12th St Suite 110, Sunrise, FL 33321, "MGX" and MGX's customer ("the Customer"), unless and to the extent agreed otherwise in writing. These General Conditions prevail over the terms issued by the Customer, even if MGX did not expressly reject such terms. Any other conditions than these General Conditions, as well as any provisions to the contrary, have to be confirmed in writing by an authorized representative of MGX in order to be applicable. In case any clause of the General Conditions or any agreement between parties would be considered by a court as invalid, void or too far reaching, parties confirm that their intention is to apply in such case a substitute clause that has as far as legally permitted the same effect as the clause written down in the General Conditions or agreement.

### **2.Offers and orders**

Any offer shall be valid for the period as stated therein. Unless otherwise stated, the offer shall be valid for 30 (thirty) days from the date of the offer. Offers shall be based on the information supplied by the Customer. Customer represents and warrants to MGX that such information is true, accurate and complete. It shall always be deemed that MGX can assume such information to be true, accurate and complete.

### **3.Term**

Unless otherwise agreed in writing, the duration of this Agreement shall be thirty-six (36) months.

### **4.Payment terms, prices and taxes**

All prices quoted by MGX are in EURO and do not include Value Added Tax ("VAT") or any similar tax that may be assessed by any jurisdiction, except for net income, net worth or franchise taxes, assessed on MGX, and travelling expenses. The parties agree that Customer shall pay directly such taxes to the appropriate tax authority (except for any VAT, which shall be paid to MGX). Within a period of 30 (thirty) days from payment date the Customer must send to MGX all official receipts of payment of such taxes issued by the appropriate tax authority. The Customer shall be responsible for paying travelling expenses. Payment of each invoiced amount, taxes included, has to be done on the account number of MGX, without any transfer charges to be incurred by MGX, within 30 (thirty) days after the date of the invoice. MGX will provide to the Customer the IBAN and the BIC codes of MGX. The payment of invoices regarding travel expenses is due according to the invoice fifteen (15) days after invoice date. Any payment received after the fixed due of such payment shall be subject to delay interest of the lesser of 1 (one) % per month or the maximum amount permitted by applicable law and to the invoicing of recovery costs equivalent to 10% of the sum invoiced with a flat rate minimum of 250 € (two hundred fifty Euros) without any need of prior notification to be sent to the Customer. This clause shall not in any event exclude the possible payment of damages or other remedies. Except when a written agreement provides differently, the subscription fees and professional services fees stipulated under this Agreement shall be subject to annual indexation. Such indexation shall be applied on the anniversary date of the Agreement and shall be based on the most recently published consumer price index (CPI) where the MGX legal contracting entity is established.

### **5.Termination**

Either party shall in case of default at all times give the other party an express written notice to remedy the default. Either party shall then have 60 days from the date of such message to cure the default.

If the default is not corrected by the end of such period, the parties reserve the right, in addition to any other remedies retained in these General Conditions, or may be entitled to by law, to immediately, without intervention of the court, terminate any order by law and - with respect to MGX - terminate any licenses and/or services granted under such order, without any repayment by either party. MGX may immediately terminate any order in total upon written notice if (a) Customer becomes or is deemed insolvent, becomes or is deemed unable to pay its debts, files a petition of bankruptcy (or any similar petition under any insolvency law of any jurisdiction), ceases its activities, commences a voluntary winding up or goes into liquidation, is placed under receivership or judicial management, enters into a scheme of arrangement with any or all of its creditors, undergoes a change in ownership or control, or proposes any dissolution, or (b) Customer attempts to transfer the MEDIAGENIX, SPIDEO or RUMO software application ("the Software") to a third party in violation of these General Conditions. Within 2 (two) weeks after discontinuance of use of the Software as provided for in this clause or otherwise, Customer shall certify in writing to MGX signed by a duly authorized representative of Customer that through its best efforts and to the best of its knowledge all usage of the software has ceased and that the original and all copies, in whole or in part, in any form, including partial copies, of the Software, have been destroyed unless directed otherwise in writing by MGX.

### **6.Liability**

In no event shall MGX's liability include any indirect, special, incidental or consequential damage regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise, whether foreseeable or not and whether arising from any act or omission on the part of MGX in respect of its obligations or howsoever arising out of the use of the Software and/or any deliverables (including implementation and customization services, software or platform as a service("Services")) or the related information or documentation, hereinafter referred to as "the Delivered Product(s) and/or Delivered Services", or any other damage which has not been caused directly and immediately by MGX, such as but not limited to loss of income, claims of third parties, loss of data, damages or defects due to materials, software or information from the Customer or a third party, even if MGX has been advised by Customer or should have reasonably been aware of the possibility of such loss. In no event shall MGX be liable for deficiencies in the framework or equipment in which the Delivered Products have been implemented and/or the Delivered Services have been performed by or at the instructions of the Customer or for deficiencies or changes in software supplied by third parties, whether or not selected at the suggestion of MGX. If any liability is found, the total liability of MGX to the Customer in any event shall never exceed half the total amount paid by the Customer to MGX for the specific Delivered Products and/ or Delivered Services that caused the damages, for the preceding 12 (twelve) months period prior to the occurrence of the event that gives rise to the claim. The waiver by either party of any default or breach of any agreement between parties shall not constitute a waiver of any subsequent default or breach.

DISCLAIMER OF WARRANTIES. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PROVIDED BY LAW, MGX HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED

TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. EXCEPT AS SPECIFICALLY SET FORTH IN THE AGREEMENT, MGX PROVIDES THE SOFTWARE "AS IS". CUSTOMER BEARS THE ENTIRE RISK AS TO THE RESULTS, QUALITY AND PERFORMANCE OF THE USE OF THE SOFTWARE. MGX DOES NOT WARRANT THAT THE SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE PROVIDED BY A REPRESENTATIVE OF MGX WILL CREATE A WARRANTY, EXPAND A WARRANTY OR

IN ANY WAY LIMIT THE DISCLAIMER OF WARRANTIES SET FORTH IN THESE GENERAL CONDITIONS. Customer acknowledges and agrees that these disclaimer of warranties were specifically bargained for and are acceptable to Customer and that Customer's willingness to agree to this disclaimer of warranties is material to MGX's decision to enter into these General Conditions. These disclaimer of warranties shall be enforceable to the maximum extent permitted by applicable law.

#### 7. Intellectual property rights

All intellectual property rights in, title to or ownership of the Delivered Product(s) and/or Delivered Services shall at all times remain with MGX. The Customer is not allowed to modify or create derivative works from the Delivered Products and/or Delivered Services, unless MGX has declared otherwise in writing. In such case, ownership of any intellectual property rights, including but not limited to all copyrights, relating to such modification or derivative work will automatically vest in MGX without any restriction. In case of translation, which is only permitted after express and prior approval in writing by MGX, ownership of all intellectual property rights with respect to such translation will automatically vest in MGX. Customer shall not use, print, copy, modify, translate or alter the Delivered Product(s) and/ or Delivered Services in whole or in part except as expressly provided for in an agreement or as permitted by applicable law. In addition, Customer has no permission to reverse the Delivered Product(s) and/or Delivered Services into source code, to decompile, disassemble, or analyze the Delivered Product(s) and/or Delivered Services by "reverse engineering" and each attempt thereto shall constitute an infringement to these General Conditions, unless such act is expressly permitted by applicable law and except where the Customer has received a prior written approval from MGX to do so.

MGX shall defend and hold Customer harmless from any claims, lawsuits or legal actions instituted against Customer by any third party that are based on the argument that the Delivered Product(s) and/or the Delivered Services constitute infringement of copyrights protected in those countries where the Delivered Product(s) and/or Delivered Services are permitted to be used. The obligations of MGX in the terms of this article are expressly subordinated to the following terms:

- Customer must inform MGX immediately and by registered mail with acknowledgement of receipt of any claim or legal action based on the infringement of copyrights, and
- Customer must communicate to MGX any information available to Customer regarding this claim, and
- Customer must co-operate, completely, with MGX in all matters of the defense, the dispute or the settlement of the claim.

If Customer fails to comply with the above, it shall be liable for all the extra costs, damages, interests and legal expenses which are caused by this failure to comply. Customer shall also be liable for any settlement or any transaction concluded without the prior written agreement of MGX.

Notwithstanding the foregoing, MGX shall not indemnify the Customer to the extent that an infringement, suspected infringement or alleged infringement arises from: (a) use of the Delivered Product(s) and/or the Delivered Services in combination by any means and in any form with other goods not specifically approved by MGX; (b) use of the Delivered Product(s) and/or the Delivered Services in a manner or for a purpose not reasonably contemplated or not authorized by MGX; (c) modification or alteration of the Delivered Product(s) and/or the Delivered Services without the prior written consent of MGX; or (d) any transaction entered into by the Customer relating to the Delivered Product(s) and/or the Delivered Services without MGX's prior consent in writing.

If the use of the Delivered Product(s) and/or the Delivered Services lead to a legal action for copyright infringement, then MGX may, at any time and at its own expense:

- Replace the Delivered Product(s) and/or Delivered Services with a non-infringing product(s) and/or services, or alter it so as to eliminate any infringement, or
- Take back the infringing part of the Delivered Product(s), and refund Customer the appropriate part of the fee, reduced by the amortized amount estimated on the life expectancy of the Delivered Product(s) as defined in consent between MGX and Customer (with a maximum of five years), or take back the infringing part of the Delivered Services and refund the Customer the appropriate part of the fee, reduced by the fee paid for the used part of the Delivered Services (set-off against the standard contract term).
- Obtain for Customer the right to continue using the infringing Delivered Product(s) and/or Delivered Services.

THE ABOVE IS THE ONLY AND EXCLUSIVE OBLIGATION AND WARRANTY OF MGX WITH RESPECT TO COPYRIGHTS.

MGX OFFERS NO WARRANTY IN THE AREA OF PATENT INFRINGEMENT, OR ANY OTHER INDUSTRIAL AND INTELLECTUAL RIGHT, EXCEPT WITH RESPECT TO COPYRIGHT AS STATED ABOVE.

#### 8. Force Majeure

Except for an obligation to pay, neither Party shall be liable for loss, damage, failure to perform or delay in performing all or any obligation under these General Conditions if such loss, damage, failure or delay is due to Acts of God, fire, flood, pandemic, strike, embargo, terrorist attack, war insurrection or riot or other cause beyond the reasonable control of that Party. Any delay resulting of such causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstance.

#### 9. Complaints

Complaints relating to the invoices must be notified to MGX directly and by registered mail within 15 (fifteen) days after the invoice date, stating the precise nature and extend of the complaints.

#### 10. Confidentiality

The Customer acknowledges that the information and data (including the general business information) it receives from MGX concerning the Delivered Product(s) and/or Delivered Services are confidential and proprietary and a valuable commercial asset of MGX. MGX acknowledges that the general business information and data it receives from the Customer is confidential and proprietary.

Both Parties agree to keep the above-mentioned information and data they receive from the other Party in confidence and to not disclose any of it to a third party or use it for its own benefit without previous consent of the other Party in writing.

Both Parties may only disclose the confidential information or data to those of its employees or advisors, who require the information to enable that Party to fulfil its contractual obligations towards the other Party.

A Party's Confidential Information shall not be deemed to include information that:

- is or becomes publicly known other than through any act or omission of the receiving party;
- was in the other Party's lawful possession before the disclosure;
- is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- is independently developed by the receiving party, which independent development can be shown by written evidence; or • is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

In case of infringement Parties agree to pay a fixed amount of 25.000 euros as liquidated damage. Parties acknowledge and agree that such sum is a genuine pre-estimate of damage.

#### 11. Personal data protection

In accordance with the Personal Data Protection Laws, the Parties acknowledge that, in respect of all personal data processed by MGX for the purpose of the Delivered Product(s) and/or Delivered Services under this Agreement:

- the Customer alone shall determine the purposes for which and the manner in which such personal data shall be processed by MGX;
- the Customer shall be the data controller; and
- MGX shall be the data processor.

Where MGX processes personal data on behalf of the Customer as data processor, MGX shall at Customer's expense:

- process the personal data only further on the written instructions of the data controller and to the extent reasonably necessary or appropriate for the performance of the Services, including the transfer of personal data to third countries, unless provided otherwise by Personal Data Protection Laws to which the data processor is subject; in the latter case, the data processor shall inform the data controller of the statutory requirement prior to the processing, unless the law prohibits such disclosure on substantial public interest grounds;
- not disclose the personal data to any person except as required or permitted by this Agreement or in accordance with the data controller's written consent;
- ensure that persons authorized to process the personal data are bound by a contractual or statutory duty of confidentiality;
- implement appropriate technical and organizational measures, to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, and against all other unlawful forms of processing;
- obtain the data controller's written consent to engage subprocessors and impose on its sub-processors the data protection obligations set out in the agreement (or legal act) between the data controller and the data processor;
- taking into account the nature of the processing, assist the data controller by taking appropriate technical and organisational measures, insofar as possible, to ensure fulfilment of the data controller's obligation to reply to requests by data subjects exercising their rights;
- assist the data controller in ensuring compliance with its security and certain other obligations, taking into account the nature of the processing and the information available to the data processor; and
- make available to the data controller all information necessary to demonstrate compliance with its obligations and allow and cooperate fully with audits, including inspections, conducted by the data controller or another person authorised to this end by the data controller, provided that

(i) such audits and inspections may only be performed during business hours and upon at least thirty(30) Business Days' prior written notice, (ii) such audits and inspections may not unduly hinder the data processor's business, and (iii) in the event the audit and inspections are conducted by a person other than the data controller, such person shall be subject to the confidentiality obligations as set out in article 10 and cannot be providing services for a MGX competitor.

#### 12. Changes to Terms and Conditions

MGX may, from time to time, change the General Conditions. MGX will notify Customer at least thirty (30) days before such changes apply to the Agreement ("Notice Period").

#### 13. Jurisdiction and Applicable Law

These General Conditions and any agreements shall be governed by, and construed in accordance with, the laws of the State of Florida (without giving effect to principles of conflicts of laws). For any action or proceeding arising out of or relating to the Agreement, the Parties hereby expressly consent to the (i) venue of Broward County, Florida, USA, and each Party hereby expressly waives any objection to such venue based upon forum nonconvention or otherwise; and (ii) jurisdiction of the state and/or federal courts in and/or for Broward County, Florida, USA

**WAIVER OF JURY TRIAL. MGX AND CUSTOMER EACH HEREBY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY AND TO PARTICIPATE IN A CLASS ACTION.**

**Injunctive Relief; Cumulative Remedies.** Each Party acknowledges and agrees that a violation or breach of any of the ownership or confidentiality provision of the Agreement could cause irreparable harm to the non-breaching Party for which monetary damages may be difficult to ascertain or an inadequate remedy. Therefore, each Party will have the right, in addition to its other rights and remedies, to seek and obtain injunctive relief for any violation of the ownership or confidentiality provisions of the Agreement, and each Party hereby expressly waives any objection, in any such equitable action, that the other Party may have an adequate remedy at law. The rights and remedies set forth in the Agreement are cumulative and concurrent and may be pursued separately, successively or together.

**Prevailing Party Attorneys' Fees.** In the event of any legal proceeding or action for injunctive relief arising out of or relating to the Agreement, the prevailing Party in such action or proceeding shall be entitled to an award of their reasonable attorneys' fees and costs (including, without limitation, all taxable and non-taxable costs, and all fees and costs to determine the amount of fees and costs to be awarded) incurred prior to any such action or legal proceeding, as well as at all levels of trial and appeal.

#### 14. Third Party Rights

No third party shall have the benefit of or the right to enforce any terms of these General Conditions and any agreements.

#### 15. Counterparts and Electronic Versions.

These General Conditions may be executed in multiple counterparts, each of which shall be deemed to be an original and of equal force and effect, and all of which taken together shall constitute one and the same instrument.

These General Conditions may be executed in electronic format with digital signatures, each Party reserves the right to maintain an executed copy of these General Conditions in electronic form only, and each Party hereby agrees that a print-out of such electronic form of these General Conditions will be deemed an original for all purposes relating to the enforceability of the terms and conditions of these General Conditions.