

**Ozgene ARC**

**General Terms  
And  
Conditions**

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In these General Terms and Conditions, unless the context otherwise requires:

**Agreement** means any agreement between the Customer and Ozgene ARC which is expressed to incorporate these General Terms and Conditions.

**Agreement Commencement Date** means the date when any order for Products or Services is accepted by Ozgene ARC.

**Business Day** means a day other than Saturday, Sunday or public holiday in Perth, Western Australia.

**Confidential Information** means information in respect of the Agreement that:

- (a) is by its nature confidential; or
- (b) is specified by a Party to be confidential, including any information specified to be confidential in the Agreement; or
- (c) a Party knows or ought to know is confidential.

**Copyright Act** means the *Copyright Act 1968* (Cth).

**Customer** means the person who purchases the Product or the Services from Ozgene ARC.

**Event of Default** means the occurrence of any one of the following events:

- (a) the Customer breaches an obligation under the Agreement that cannot be remedied; or
- (b) the Customer breaches any other obligation under the Agreement and that breach is not remedied within the period of time specified in the notice (being not less than 10 Business Days) after the Ozgene ARC gives a notice to the Customer requiring the breach to be remedied; or
- (c) the Customer commits 3 breaches of its obligations under the Agreement over any 12 month period, provided that Ozgene ARC has given the Customer notice of any such breaches and whether or not the Customer has rectified such breaches; or
- (d) an Insolvency Event occurs in respect of the Customer; or
- (e) the Customer ceases, or threatens to cease, to carry on business; or
- (f) it becomes unlawful for the Customer to perform its obligations under the Agreement; or
- (g) if the Customer is a body corporate, it is convicted of a criminal or statutory offence that is punishable by a fine or penalty of, or exceeding, \$10,000; or
- (h) if in the reasonable opinion of Ozgene ARC, the reputation of Ozgene ARC, the State or the Government of Western Australia is, or is likely to be, damaged by any act or omission of the Customer.

**Existing Material** means a work (as defined in the Copyright Act), a product or any other material, which satisfies all of the following criteria:

- (a) the work, product or other material:
  - (i) was created prior to the commencement of the Term; or

- (ii) is to be created during the Term outside the scope of the Agreement, including any subsequent modifications to such work, product or other material; and
- (b) the work, product or other material is required specifically for, or in connection with, the Agreement.

**Fee** means the amount or amounts specified in, or the amount determined by the formula set out in, the Agreement.

**Force Majeure Event** means an event that prevents a Party from performing its obligations, or receiving the benefit of the other Party's obligations, in whole or part, under the Agreement and which is unforeseeable and beyond the reasonable control of the affected Party including:

- (a) acts of God;
- (b) explosion or fire;
- (c) storm or cyclone (of any category);
- (d) flood;
- (e) landslides;
- (f) earthquake or tsunami;
- (g) volcanic eruption;
- (h) impact of vehicles or aircraft;
- (i) failure of a public utility;
- (j) epidemic or pandemic;
- (k) civil unrest;
- (l) industrial action (other than industrial action limited to the affected party or a subcontractor);
- (m) war (including civil war);
- (n) acts of terrorism; and
- (o) radioactive, chemical, or biological contamination,

but does not include:

- (p) lack of or inability to use funds for any reason; or
- (q) any occurrence which results from the wrongful or negligent act or omission of the affected party or the failure by the affected party to act in a reasonable and prudent manner; or
- (r) an event or circumstance where the event or circumstance or its effects on the affected party or the resulting inability of the affected Party to perform its obligations, or receive the benefit of the other Party's obligations, could have been prevented, overcome or remedied by the exercise by the affected Party of the standard of care and diligence consistent with that of a reasonable and prudent person; or
- (s) breakdown of equipment; or
- (t) the failure by a third party to fulfil a contractual commitment with the affected Party other than as a result of any of items (a) to (o) above; or

- (u) any act or omission of a subcontractor.

**Insolvency Event** means the occurrence of any of the following events:

- (a) (informs creditors) a corporation informs its creditors generally that it is insolvent;
- (b) (receiver) a liquidator, administrator, trustee in bankruptcy, receiver or receiver and manager or similar officer is appointed in respect of any of the assets of a corporation;
- (c) (execution) a distress, attachment or other execution is levied or enforced upon or against any assets of a corporation and in the case of a writ of execution or other order or process requiring payment, it is not withdrawn or dismissed within 10 Business Days;
- (d) (voluntary liquidation) a corporation enters into voluntary liquidation;
- (e) (application) an application is made for the administration, dissolution or winding up of a corporation which application is not stayed within 10 Business Days of being made;
- (f) (winding up) an order is made for the administration, dissolution or winding up of a corporation;
- (g) (resolution) a resolution is passed for the administration or winding up of a corporation other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the other Party;
- (h) (arrangement or composition) a corporation enters, or resolves to enter into or has a meeting of its creditors called to enter into any scheme of arrangement or composition with its creditors generally, or any class of its creditors, other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the other Party;
- (i) (statutory demand) a corporation fails to comply with, or fails to apply to have set aside, a statutory demand within 10 Business Days of the time for compliance, or:
  - (i) a corporation applies to have a statutory demand set aside within 10 Business Days of the time for compliance;
  - (ii) the application to set aside the statutory demand is unsuccessful; and
  - (iii) the corporation fails to comply with the statutory demand within 5 Business Days of the order of the court dismissing the application;
- (j) (execution levied against it) a corporation has execution levied against it by creditors, debenture holders or trustees or under a floating charge or circulating security interest; or
- (k) (insolvency corporation) a corporation is unable to pay its debts when they fall due, or is deemed unable to pay its debts under any applicable legislation (other than as a result of a failure to pay a debt or claim which is the subject of a good faith dispute);
- (l) (insolvency persons) a person becomes an insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cth) or action is taken which could result in that event;
- (m) (death etc.) a person dies, ceases to be of full legal capacity or otherwise becomes incapable of managing its own affairs for any reason; and
- (n) (analogous matters) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Intellectual Property Rights** means:

- (a) patents, copyright, rights in circuit layouts, registered designs, trade marks and the right to have confidential information (being information which is capable of being protected by way of an action for breach of confidence) kept confidential; and
- (b) any application or right to apply for registration of any of those rights,

but does not include Moral Rights.

**Material** means Existing Material and New Material.

**Moral Rights** has the same meaning as in the Copyright Act.

**New Material** means anything created by a Party under the Agreement in which Intellectual Property Rights subsist.

**Non-Standard Products** are those products that are not Standard that the Ozgene ARC provides to customers from time-to-time with the Customer's knowledge and would include such products as aged animals and weight-specific animals; animals known to be carrying a deleterious, infectious, commensal, or other such agent; and animals where the Customer is notified, in advance, of a preexisting condition or disease of any sort.

**Party** means a party to the Agreement

**Parties** means both or all of them.

**Premises** means any premises which a Party must attend or to which a Party has access in order to provide or receive the Services.

**Products** means any product supplied by Ozgene ARC to the Customer including animals, gametes, samples or materials taken from animals.

**Public Authority** has the same meaning as in the *State Supply Commission Act 1991*.

**Records** means records and information of any kind, including originals and copies of all accounts, financial statements, books, files, reports, records, correspondence, documents and other materials created for, or relating to, or used in connection with, the supply of the Services, whether or not containing Confidential Information, and however such records and information are held, stored or recorded.

**Services** means the services specified in the Agreement, including but not limited to, the conducting of tests on Customer's animals, collecting samples, research, the boarding of Customer's animals at Ozgene ARC and any other Service permitted by Ozgene ARC's enabling legislation.

**Standard Product** means stock stain animals available for purchase via Ozgene ARC's online purchasing portal.

**State** means the State of Western Australia.

**Term** means the period specified as such in the Agreement, commencing on the Agreement Commencement Date.

## 1.2 Interpretation

In these General Terms and Conditions, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;

- (b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (c) a reference to a gender includes other genders;
- (d) a reference to a person includes a Public Authority, a public body, a company and an incorporated or unincorporated association or body of persons;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns;
- (f) if a Party consists of a consortium of two or more persons whether by way of partnership or joint venture or otherwise, then:
  - (i) an obligation imposed on a Party under the Agreement binds each person who comprises that person jointly and severally;
  - (ii) each person who comprises a Party agrees to do all things necessary to enable the obligations imposed on that Party under the Agreement to be undertaken; and
  - (iii) the act of one person who comprises a Party binds the other persons who comprise that Party;
- (g) an agreement, representation or warranty on the part of or in favour of two or more persons binds, or is for the benefit of, them jointly and severally;
- (h) no rule of interpretation applies to the disadvantage of a Party on the basis that it put forward these General Terms and Conditions;
- (i) "includes" in any form is not a word of limitation;
- (j) the meaning of "or" will be that of the inclusive "or", meaning one, some or all of a number of possibilities;
- (k) a reference to these General Terms and Conditions or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of the relevant Party;
- (l) a reference to a document published at an electronic address is to the document as published at that electronic address on the date of first public issue of the Agreement;
- (m) a reference to a clause is a reference to a clause of these General Terms and Conditions;
- (n) headings are included for convenience only and do not affect the interpretation of these General Terms and Conditions;
- (o) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (p) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (q) a reference to writing includes any means of representing or reproducing words in visible form including by electronic means such as facsimile transmission;
- (r) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;
- (s) a reference to a month is to a calendar month and a reference to a year is to a calendar year;

- (t) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;
- (u) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day;
- (v) a reference to a monetary amount means that amount in Australian currency; and
- (w) a reference to time means the time observed by the general community from time to time in Perth, Western Australia.

## **2. TERM OF THE AGREEMENT**

### **2.1 Term**

- (a) If the Agreement is for the supply of a Product, the Term is from the date the Customer places an order for the Product until the Customer pays for and takes delivery of the Product whichever is the later.
- (b) If the Agreement is for the supply of Services, the term is from the date Ozgene ARC confirms to the Customer that it is able and willing to provide the Services until the Services are concluded or the Customer pays for the Services whichever is the later.

## **3. OZGENE ARC'S OBLIGATIONS**

### **3.1 Supply of Products**

Ozgene ARC must supply the Products:

- (a) in accordance with the terms of the Agreement;
- (b) with due care and skill and in a professional, punctual and diligent manner; and
- (c) in accordance with all relevant State and Commonwealth laws.

### **3.2 Service Standards**

Ozgene ARC must perform the Services:

- (a) in accordance with the terms of the Agreement;
- (b) with due care and skill and in a professional, punctual and diligent manner; and
- (c) in accordance with all relevant State and Commonwealth laws.

### **3.3 Customer's Sick or Diseased Animals**

Ozgene ARC will not accept any animal for boarding that is in any way unwell, diseased, or unfit or has been in contact with any other animal that is unwell, diseased, or unfit.

In the event that a Customer's animal becomes unwell, diseased or unfit during boarding at Ozgene ARC, Ozgene ARC may euthanise the animal.

### **3.4 Specified Personnel**

Where Specified Personnel are specified in the Agreement as being responsible for the performance of key roles or tasks under the Agreement, Ozgene ARC will provide those individuals to fulfill those tasks. If, notwithstanding this obligation, a specified individual is unavailable at any time during the scheduled performance of these key roles or tasks, Ozgene ARC will promptly advise the Customer and provide a suitable substitute.

### 3.5 Personnel Generally

Each Party must ensure that its Personnel:

- (a) are properly qualified and suitable for the tasks that they are to do;
- (b) hold all necessary permits, licences and authorities required by law; and
- (c) act, in all circumstances and at all times, in a fit and proper manner.

If any Personnel of a Party fail to meet or comply with this clause the other Party may require that the relevant Personnel be removed from work under the Agreement.

## 4. GENERAL OBLIGATIONS OF THE PARTIES

### 4.1 Breeding etc.

In respect of any Products it purchases from Ozgene ARC the Customer:

- (a) must not breed any animal provided for commercial gain;
- (b) must not use any Product provided for commercial gain;
- (c) must only use any Product provided for research purposes;
- (d) may conduct non-commercial research breeding but requires prior notification and approval of the OZGENE ARC's Chief Executive Officer and/or Director of Operations.

### 4.2 Maintenance of Rodent Strains

- (a) The Customer must provide the Ozgene ARC's staff with **all** relevant information about the rodent strain that may affect the health, breeding, housing and maintenance of the rodent strain. This includes all phenotype and behavioral characteristics that the owner/customer knows about the rodent strain.
- (b) If there is no knowledge of phenotype or behavioral characteristics, Ozgene ARC's staff will monitor and record any deviations from normal behavior.
- (c) Decisions regarding the animal/s pain and distress will be made by trained the Ozgene ARC's staff, and action to reduce the pain and distress will be taken immediately, without consulting the Customer. Euthanizing the animal may need to be taken. The Customer will be notified, and strategies for any repeated pain/distress in other animals will be discussed and implemented.
- (d) The Ozgene ARC has the right to test animals for specific pathogens for Ozgene ARC health screening reasons at any point in time – without consulting the Customer.
- (e) The Ozgene ARC **does not** take any responsibility for the phenotype or behavioral characteristics that a rodent strain may display at our facility, which may not have displayed at other facilities.
- (f) The Ozgene ARC **does not** take responsibility when a rodent strain can no longer breed or produce progeny as a result of:
  - (i) Strain phenotypes (tumors, paralysis etc);
  - (ii) Strain behavioral characteristics (barbering, aggressiveness);
  - (iii) Strain breeding characteristics (infertility, low pups numbers, poor male:female pup ratio); and
  - (iv) Incorrect genotype results provided by the Customer.
- (g) The number of female breeders for a rodent strain is determined by BOTH the Customer and Ozgene



ARC's staff according to:

- (i) Planned AEC approved experiments (#'s, age, sex details are specified/required)
- (ii) Known breeding performance of rodent strain

Where breeding performance is unknown, a minimum of 5 breeding females will be required until characteristics are known.

- (h) The Customer must provide Ozgene ARC with an AEC number before breeding and supplying of animals begins.
  - (i) If the date of the AEC number expires, Ozgene ARC has the right to discontinue breeding of the rodent strain.
  - (ii) If an order is placed for a large number of animals, but an AEC number is not available, the Ozgene ARC has the right to refuse production of the progeny, until an AEC number is obtained.
  - (iii) If a Customer requests one or more rodents of a strain to be euthanized, against OZGENE ARC recommendations, the OZGENE ARC is not responsible where the entire strain is lost (i.e. where the rodent strain stops producing progeny and can no longer continue being maintained).

**NOTE:** If the Customer requires a large number of animals, it must take this into account when applying for a AEC number – please make sure enough time is allocated to the project to include the amount of time it may take to produce the animals required, eg. If 100 males are required, but only 5 males and 5 females are imported (or breeding), then it may take up to 6 months to produce this number.

- If there is greater than 80% wastage of animals from a rodent strain (i.e. more than 80% of animals that could be used by the owner/customer are culled), Ozgene ARC will have the right to reduce breeding numbers and stock numbers, without confirmation from the owner – Ozgene ARC's staff will notify the Customer when this happens.
- When the Customer no longer requires progeny/stock, but requests the rodent strain to remain breeding (i.e. ticking over) a minimum number of breeders will be recommended by the Ozgene ARC's staff.
- If the Customer requests to breed *fewer* than the recommended minimum number of breeding females, Ozgene ARC **will not** take any responsibility where the rodent strain is lost (i.e. where the rodent strain stops producing progeny and can no longer continue being maintained).

#### 4.3 Jax® Mice

If the Customer purchases or acquires Jax® Mice from Ozgene ARC the Customer in addition to these General Terms and Conditions also agrees to the Jackson Product Terms and Conditions in Schedule A

#### 4.4 Premises

When either Party is attending the other's Premises that Party must:

- (a) comply with all reasonable directions and procedures of the owner or occupier of the Premises relating to occupational health, safety, security and confidentiality in connection with the Premises;
- (b) do everything reasonably necessary to protect people and property on the Premises;
- (c) prevent any undue nuisance or disturbance being caused at the Premises; and
- (d) remove any person from the Premises if the owner or lawful occupier of the Premises so requires.

#### **4.5 Equipment and Resources**

If one Party gives the other Party use of its equipment or other resources in connection with the Agreement, that Party must:

- (a) take the same degree of care with that equipment or resources as it would its own;
- (b) if the equipment or other resources are damaged or destroyed due to any act or omission of the Party, pay to the other Party the cost of repair or replacement of the equipment or other resources; and
- (c) return the equipment or other resources on the expiry or termination of the Agreement.

#### **4.6 Management Requirements**

Each Party must undertake and comply with the reporting, meeting and management requirements which are specified in the Agreement.

### **5. GENERAL WARRANTIES**

#### **5.1 Customer's General Warranties**

Except where the Customer has otherwise disclosed in writing to Ozgene ARC, and the Customer and Ozgene ARC have given their prior written consent to the matter disclosed, the Customer warrants in favour of Ozgene ARC that:

- (a) the Customer is lawfully permitted to purchase the Products and in compliance with all relevant legislative and regulatory requirements including, but not limited to, animal welfare legislation, biological safety legislation and customs regulations applicable at the point of sale and delivery of the Products;
- (b) the Customer has no conflict of interest arising out of the Agreement;
- (c) the Customer is properly authorised and has the power to enter into the Agreement and perform the Customer's obligations under the Agreement;
- (d) the Customer's obligations under the Agreement are valid and binding and are enforceable against the Customer;
- (e) all information provided by the Customer to Ozgene ARC in connection with the Agreement is true and correct; and
- (f) except where lawfully excused under the Agreement, there is nothing that prevents the Customer from complying with any obligation under the Agreement;

#### **5.2 General Warranties Made Continuously**

The warranties made by the Customer under clause 5.1 are taken to be made continuously throughout the Term.

#### **5.3 Customer's Undertakings**

The Customer must:

- (a) promptly notify Ozgene ARC if any warranty under clause 5.1 is breached or becomes untrue;
- (b) always act ethically in connection with the Agreement and in accordance with good corporate governance practices;

- (c) comply with all State and Commonwealth laws relevant to the Agreement;
- (d) cooperate fully with the Ozgene ARC in respect of the administration of the Agreement; and
- (e) use its best endeavours to ensure that no Customer Personnel cause the Customer to breach the Agreement.

#### **5.4 Customer's Expenses and Equipment**

Unless Ozgene ARC agrees otherwise in writing, the Customer must:

- (a) pay all out-of-pocket expenses incurred by the Customer in connection with the Agreement including freight and travel expenses, accommodation and subsistence expenses; and
- (b) provide everything necessary to enable it to fully comply with all of its obligations under the Agreement, subject to Ozgene ARC doing everything that is reasonably required under the Agreement to enable the Customer to so comply.

### **6. ACCEPTANCE**

Risk in the Product passes when the Product leaves Ozgene ARC, though title only passes on payment.

In no circumstances will the Ozgene ARC accept a return of the Products.

If, on delivery, the Customer finds any Standard Product deceased, diseased, ill or otherwise unfit, the Customer must within twenty-four (24) hours advise Ozgene ARC of the event, though it is the responsibility of the Customer to humanely euthanise the Standard Product. If the Customer refuses to provide suitable evidence of the matter to work to mutually resolve the matter, the Customer must make full payment for the animals, shipping, and any other such costs incurred by the Ozgene ARC.

Non-Standard Products, as determined by the Ozgene ARC, are exempt from replacement, refund, etc. and the Customer accepts ownership of the animals 'as is' at the time the animals are prepared for dispatch. The Customer also acknowledges that the Non Standard Products are unique and potentially irreplaceable in nature, full payment from the Customer will be made prior to, or on terms otherwise agreed, prior to dispatch to the customer's institution; furthermore, animals arriving at the institution are 'as is' even if the animals are deceased, diseased, or other 'less than satisfactory' state due to factors beyond the Ozgene ARC's control (e.g., age, preexisting condition(s)). Nevertheless the Ozgene ARC has acted in good faith to provide the requested service and will be paid in full and is not held liable for any perceived or actual animal health or welfare issues that the customer has been apprised either spoken, written, or reasonably expected due to the various factors beyond the Ozgene ARC's control (e.g., age, preexisting condition(s)).

All costs including veterinary costs associated with delivery of deceased, diseased, ill or otherwise unfit Products, including the costs associated with euthanising the Product, is the Customer's responsibility.

### **7. ACCESS**

#### **7.1 Access and Records**

Subject to the Ozgene ARC, the Customer or both (as applicable):

- a) giving reasonable prior notice to the Customer; and
- b) complying with all reasonable directions and procedures of the Customer relating to occupational health, safety, security and confidentiality in connection with the Customer's premises,

the Customer must allow Ozgene ARC to:

- (a) have reasonable access to any premises used or occupied by the Customer in connection with the Products and/or Services;

- (b) have reasonable access to all Records in the custody or control of the Customer; and
- (c) examine, audit, copy and use any Records in the custody or control of the Customer.

The Customer must keep accurate, complete and current written Records in respect of the Agreement, including:

- (a) if the Agreement is for the supply of Products:
  - (i) the type and quantity of the Products supplied to the Customer;
  - (ii) the date and time on which the Ozgene ARC supplied the Products to the Customer; and
  - (iii) the place to which Ozgene ARC delivered the Products to the Customer;
- (b) if the Agreement is for the supply of Services:
  - (i) the type of Services, including the separate tasks, supplied to the Customer on each day during the Term;
  - (ii) the time that Ozgene ARC spent providing the Services on each day during the Term; and
  - (iii) the name and title of all Contractor Personnel who provided the Services or were responsible for supervising the provision of the Services.

The Customer must comply with the directions of the Ozgene ARC in relation to the keeping of Records whether those directions relate to the period before or after the expiry of the Term.

The Customer must keep all Records for at least 7 years after the expiry or termination of the Agreement.

The Customer must do everything necessary to obtain any third party consents which are required to enable Ozgene ARC to have access to Records under this clause 7.

## **7.2 Survival of Clause**

This clause 7 survives expiration or termination of the Agreement.

## **8 FEES AND PAYMENT**

### **8.1 Fee**

- (a) The Customer agrees that the fees for the Products and Services are due from the point of placing their order on the Ozgene ARC ordering portal. Upon order placement, Ozgene ARC will issue an invoice for payment dated the same day. Payment is due immediately, unless the Parties have prior agreed to terms of credit.
- (b) The Customer agrees to pay the Fee to the Ozgene ARC in accordance with the Agreement.
- (c) The total Fee payable will be calculated using the applicable rate of charge for the respective Products purchased as published in Ozgene ARC's 'Price List', found on the Ozgene ARC website.
- (d) Ozgene ARC reserves the right to adjust its Fees published in its Price List from time to time. However Ozgene ARC agrees it will provide customers at least 30 days notice of any changed Fees.

### **8.2 Fee of Invoice**

The Customer must pay the amount specified in an invoice on receipt of the invoice or within a time period prior approved by Ozgene ARC.

### **8.3 Method of Payment**

The Customer may pay the amount specified in an invoice in any of the following ways:

- (a) by electronic funds transfer to the account with a financial institution nominated by the Ozgene ARC; or
- (b) credit card or PayPal (if Ozgene ARC offers those facilities); these payment instruments may be subject to any additional credit card or PayPal payment fees charged by the relevant third-party provider.

### **8.4 Failure to Pay**

- (a) If demanded by Ozgene ARC, the Customer must pay a Late Fee on any unpaid Customer invoice not made by the Customer by the date required by clause 8.2 or any later date for payment agreed by Ozgene ARC.
- (b) The Late Fee:
  - (i) will be published in the Ozgene ARC 'Price List', found on the Ozgene ARC website; and
  - (ii) Customers will be given at least 30 days written notice regarding a change in the Late Fee.

In the event a Customer fails to pay the Fee when due following receipt of written notice from the Ozgene ARC that the Fee is past the due date for payment, Ozgene ARC may in its discretion suspend or terminate provision of the Products or Services and ownership of any animal or other material in the control of the Ozgene ARC will automatically vest in the Ozgene ARC and it may deal with any animal or other material as it sees fit including but not limited to the right to humanely euthanise any animal or sell, dispose of or otherwise deal with the animal or material as it sees fit.

### **8.5 Order Cancellation and Amendments**

- (a) The Customer may cancel or amend an order for Standard Products on the following terms:
  - (i) The Customer must notify Ozgene ARC of any cancellation or amendment in their order not less than two (2) business days prior to the scheduled dispatch date to the Customer's institution; and
  - (ii) If cancelled or amended within 14 days of placing the order, the Customer will receive a refund of any difference in amount originally invoiced and the amount due for the amended or cancelled order (where cancelled orders will result in a full refund); or
  - (iii) If cancelled or amended after 14 days from the date of placing the order, the Customer will not be entitled to a refund of any difference in amount originally invoiced and the amount due for the amended or cancelled order and any initial invoiced amounts with respect to the order must be paid to Ozgene ARC.

However:

- (b) The Customer acknowledges that the Non-Standard Products are unique, potentially irreplaceable in nature and may require Ozgene ARC to perform additional works or services to fulfil an order for Non-Standard Products. Therefore, the Customer agrees that if an order for Non-Standard Products is cancelled, in part or full, the Customer will not receive a refund for cancelled Non-Standard Products, regardless of when such cancellation occurs.

## **9. GST**

- (a) Capitalised expressions which are not defined in this clause 9 but which have a defined

meaning in the GST Law have the same meaning in this clause 9.

(b) In the Agreement:

**GST** means the goods and services tax as imposed by the GST Law;

**GST Amount** means, in relation to a Payment, an amount arrived at by multiplying the Payment (or the relevant part of a Payment if only part of a Payment is the consideration for a Taxable Supply) by the prevailing rate of GST;

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*, or, if that Act is not valid or does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and

**Payment** means:

- (i) Fees;
  - (i) the amount of any monetary consideration (other than a GST Amount payable under this paragraph); and
  - (ii) the GST Exclusive Market Value of any non-monetary consideration, paid or provided a Party for any Supply made under or in connection with this Agreement and includes any amount payable by way of indemnity, reimbursement, compensation or damages.
- (c) The parties agree that all Payments have been set or determined at an amount which is net of GST.
- (d) Where required by law, a Party will add the GST Amount to any Payment.
- (e) If a payment (including a Payment as defined in this clause 9) is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred a Party, then the payment will be reduced by the amount of any input tax credit to which that Party is entitled for that loss, cost or expense.

## 10. INSURANCE

### 10.1 Insurance Requirements

The Customer must take out and maintain the following insurances:

- (a) Public liability insurance covering the legal liability of the Customer and the Contractor's personnel arising out of the Services for an amount of not less than **\$5 million** for any one occurrence and unlimited in the aggregate;
- (b) Professional indemnity insurance covering the legal liability of the Customer and the Contractor's personnel under the Agreement, arising out of any act, negligence, error or omission made or done by or on behalf of the Customer, or any subcontractor in connection with the Agreement for a sum of **\$1 million** for any one claim and in the annual aggregate, with a provision of one automatic reinstatement of the full sum insured in any one period of insurance.

Professional indemnity insurance required under this clause must be extended to include:

- (i) fraud, dishonesty, defamation, breach of confidentiality, infringement of patent, copyright, design, trademark or circuit layout rights;
- (ii) loss of or damage to documents and data; and
- (iii) breach of Chapters 2 and 3 of the Australian Consumer Law and the Australian

Consumer Law (WA).

- (c) Workers' compensation insurance in accordance with the provisions of the *Workers' Compensation and Injury Management Act 1981* (WA), including cover for common law liability for an amount of not less than **\$50 million** for any one occurrence in respect of workers of the Customer. The insurance policy must be extended to cover any claims and liability that may arise with an indemnity under section 175(2) of the *Workers' Compensation and Injury Management Act 1981*.

## **10.2 Reputable and Solvent Insurer**

Any policy of insurance taken out by the Customer must be taken out with a reputable and solvent insurer reasonably acceptable to Ozgene ARC which carries on insurance business in Australia and is authorised in Australia to operate as an insurance company.

## **10.3 Maintenance of Insurance**

The Customer must:

- (a) maintain the insurances (except for professional indemnity insurance) required under clause 10.1(a) throughout the Term;
- (b) maintain any professional indemnity insurance required under clause 10.1(a) throughout the Term and for a period of 6 years after the expiration or termination of the Agreement;
- (c) not do or allow to be done anything which may vitiate, invalidate, prejudice or render ineffective the insurance or entitle the insurer to refuse a claim; and
- (d) without limiting clauses 10.3(a) – 10.3(c), promptly reinstate any insurance required under clause 10.1(a) if it lapses or if cover is exhausted.

## **10.4 Evidence of Insurance**

The Customer must give to Ozgene ARC sufficient evidence of the insurances required under clause 10.1(a) (including, if requested, a copy of any policy) and provide a certificate of currency of insurance as requested by Ozgene ARC as the case requires at any time.

## **10.5 Incidents and Claims**

- (a) If the Customer becomes aware of any event or incident occurring which gives rise or is likely to give rise to a claim under any insurance required under clause 10.1(a), it must as soon as reasonably practicable notify Ozgene ARC in writing of that event or incident.
- (b) Failure to comply with clause 10.5(a) will not invalidate or otherwise affect any indemnities, liabilities and releases under the Agreement.

## **10.6 Continuing Obligations**

The obligations of the Customer under this clause 10 are continuing obligations and survive expiration or termination of the Agreement.

## **11 PUBLIC DISCLOSURE AND CONFIDENTIALITY**

### **11.1 Disclosure**

The Customer agrees, on a de-identified basis, Ozgene ARC may share information obtained from the Customer with other research organisations about the behaviour or characteristics of animals which it has provided and with the Customer's consent (verbal or in writing) may share such information on an identified basis.

### **11.2 Release**

The Customer releases Ozgene ARC from all liability whatsoever for any loss, injury, damage, liability, costs or expense resulting from the disclosure of information about the Customer under clauses 11.1 by Ozgene ARC.

### **11.3 Confidentiality**

- (a) Each Party must keep any Confidential Information confidential. A Party must not disclose, use, reproduce or distribute to any person the Confidential Information except:
  - (i) where necessary (and only to the extent necessary) for the purpose of supplying the Services; or
  - (ii) as authorised in writing by the other Party; or
  - (iii) to the extent that the Confidential Information is public knowledge (other than because of a breach of this clause by a Party); or
  - (iv) as required by any law, judicial or parliamentary body or governmental agency; or
  - (v) when required (and only to the extent required) to the Party's professional advisers, but the disclosing Party must ensure that such professional advisers are bound by the confidentiality obligations imposed on that Party under this clause 11.5(a).
- (b) A Party must immediately notify the other Party if it becomes aware of a suspected or actual unauthorised disclosure, copying or use of the other Party's Confidential Information.
- (c) A Party must ensure that each person to whom it discloses the Confidential Information (except a person to whom disclosure is legally required) complies with the obligations in clauses 11.5(a) and 11.5(b).

### **11.4 Return of Confidential Information**

Except to the extent that a Party is required by law to retain any Records, a Party must return all Records containing the other Party's Confidential Information immediately at the expiration or termination of the Agreement.

### **11.5 Survival**

The obligations in this clause 11 are continuing obligations and survive expiration or termination of the Agreement.

## **12 INTELLECTUAL PROPERTY**

Intellectual Property Rights in all Products or Services provided by Ozgene ARC to the Customer remains with Ozgene ARC.

Ozgene ARC grants to the Customer a non-exclusive, perpetual, royalty free (aside from and subject to payment of the Fee) licence to use the Intellectual Property Rights in the Products or Services for internal research purposes only.

## **13 PUBLICITY**

- (a) Unless:
  - (i) a Party gives its prior written consent; or
  - (ii) a Party is required by law to do so,
  - (iii) a Party must not use the other Party's logo.



- (b) A Party must not make any misleading public statement concerning the Agreement.
- (c) A Party may use existence of the Agreement and the other Party's name for reasonable promotional or publicity purposes (but only with the written consent of the other party), and reporting functions.

#### **14 PRIVACY**

- (a) If the Ozgene ARC provides personal information to the Customer, the Customer agrees to comply with its obligations (if any) under or arising pursuant to the *Privacy Act 1988* (Cth) to the extent relevant to the Agreement.
- (b) The Customer also agrees to comply with:
  - (i) such other Commonwealth, State or Territory legislation related to privacy which is relevant to the Agreement;
  - (ii) any directions made by a Privacy Commissioner relevant to the Agreement;
  - (iii) any privacy procedures stated in the Agreement
- (c) If the Customer is exempt from compliance with the *Privacy Act 1988* (Cth) because its annual turnover is less than the prescribed threshold, and if the Customer is not subject to an approved privacy code, the Customer must comply with the National Privacy Principles set out in the *Privacy Act 1988* (Cth) as if it were required to comply with that legislation.

#### **15 ACKNOWLEDGMENT OF HEALTH STATUS**

In purchasing the Product, the Customer acknowledges that it has read and understood the most recent health report (<http://www.ozgene.com>) or available in hard copy on request. The tests referred to in that report were done on a statistically significant number of animals. In purchasing the Product, the Customer accepts that the health report only represents the results of tests done up to the date stated for each test on the report.

#### **16 LIABILITY**

The liability of either Party for breach of the Agreement or for any other common law or statutory cause of action arising out of the operation of the Agreement will be determined under the relevant law in Western Australia that is recognised, and would be applied, by the High Court of Australia from time to time.

#### **17 LIMITATION OF LIABILITY**

##### **(a) General limitation of liability**

Subject to clause 17(c), the total maximum aggregate liability of one Party to the other Party under the Agreement is the total value of the Fees payable.

##### **(b) No liability for indirect loss**

Subject to clause 17(c), no Party will have any liability to the other Party or any other person for any Loss or liability arising from any claim whether in tort, contract or otherwise, in respect of loss of profit, income, business opportunity, goodwill or reputation, and any other loss or liability which would fall within the second limb of losses referred to in *Hadley v Baxendale* (1854) 9 Ex 341.

##### **(c) Exclusions to limitation of liability**

The limitations of liability in clauses 17(a) and clause 17(b) do not apply to the following:

- (i) any statutory fine levied against a Party arising from any breach of law by the other Party;
- (ii) personal injury, sickness or death;
- (iii) damage to property;
- (iv) criminal acts of, fraudulent acts or omissions of, and fraudulent misrepresentation by, a Party;
- (v) wrongful acts committed by a Party with a reckless indifference to the consequences;
- (vi) wilful and intentional default by a Party;
- (vii) the abandonment of the Agreement by a Party;
- (viii) matters that cannot be excluded at law;
- (ix) a breach of confidentiality or privacy;
- (x) infringement of Intellectual Property Rights;
- (xi) exemplary or punitive damages;

**(d) Losses reduced proportionately**

The liability of a Party ("1st Party") for Loss sustained by the other Party ("2nd party") will be reduced proportionately to the extent that such Loss has been caused by or contributed to by the 2nd Party.

**(e) Termination**

If at any time during the Term the amount of damages payable by one Party ("1<sup>st</sup> Party") to another Party ("2<sup>nd</sup> Party") exceed the amount payable under clause 17(a) then the 2<sup>nd</sup> Party may terminate the Agreement by giving written notice to the 1<sup>st</sup> Party.

**(f) Technical Assistance**

The Parties agree that in the event Ozgene ARC provides technical advice or assistance, then no liability for loss or damage suffered whether directly or indirectly by the Customer in consequence of the Customer's reliance upon that technical advice or assistance shall attach to Ozgene ARC, whether that loss or damage arises for breach of contract or at common law, including the law relating to negligence by the Ozgene ARC or under statute or otherwise, and whether arising directly, indirectly, or consequentially.

**18 CONFLICT OF INTEREST**

If a conflict of interest arises in respect of the Customer, it must:

- (a) promptly notify Ozgene ARC that the conflict has arisen and provide full details; and
- (b) take reasonable steps in consultation with Ozgene ARC to remove or manage the conflict.

**19 AGREEMENT ADMINISTRATION**

**18.1 Ozgene ARC's Representative**

Any person described in the Agreement as the Ozgene ARC's Representative may act as the

representative of the Ozgene ARC in relation to the Agreement.

The Customer agrees and acknowledges that the Ozgene ARC's Representative may administer the Agreement and any such administration by the Ozgene ARC's Representative will be deemed to be administration by the Ozgene ARC for the purposes of the Agreement.

The Ozgene ARC may by notice to the Customer at any time:

- (a) vary or terminate the appointment of the Animal Resource Centre's Representative; and
- (b) appoint any other person to act as the Ozgene ARC's Representative in relation to the Agreement.

## **18.2 Customer's Representative**

Any person described in the Agreement as the Customer's Representative may act as the representative of the Customer in relation to the Agreement.

Ozgene ARC agrees and acknowledges that the Customer's Representative may administer the Agreement and any such administration by the Customer's Representative will be deemed to be administration by the Customer for the purposes of the Agreement.

The Customer may by notice to Ozgene ARC at any time:

- (a) vary or terminate the appointment of the Customer's Representative; and
- (b) appoint any other person to act as the Customer's Representative in relation to the Agreement.

## **19 DEFAULT, TERMINATION AND SUSPENSION**

### **19.1 Consequences of Event of Default**

- (a) If an Event of Default occurs in respect of one Party the other Party may by notice in writing to the Party the subject of the Event of Default terminate the Agreement.
- (b) If an Event of Default occurs Ozgene ARC reserves the right not to resupply the Customer at any time in the future.

### **19.2 Consequences of Termination or Expiry**

- (a) The expiration or termination of the Agreement does not affect any rights, liabilities or obligations of either Party as a result of anything occurring before the expiration or termination.
- (b) As soon as is practicable after expiration or termination of the Agreement, each Party must:
  - (i) deliver to the other Party all Records (except where required by law to retain a copy);
  - (ii) return to the other Party all of that Party's Confidential Information (except where required by law to retain a copy); and
  - (iii) vacate the other Party's Premises.

## **21. FORCE MAJEURE**

### **21.1 Notification**

A Party that claims it is prevented from performing its, or receiving the benefit of the other Party's, obligations under this Agreement by a Force Majeure Event must, within 5 Business Days of the first occurrence of the Force Majeure Event, give to the other party written notice containing full particulars of the Force Majeure Event, including:

- (a) the nature of the Force Majeure Event;

- (b) the date of the first occurrence of the Force Majeure Event;
- (c) the effect of the Force Majeure Event on that Party's ability to perform its, or receive the benefit of the other Party's, obligations under this Agreement; and
- (d) the expected duration of the Force Majeure Event.

## **21.2 Entitlement of the Affected Party**

- (a) If a Party is prevented from performing its, or receiving the benefit of the other Party's, obligations under this Agreement in whole or part by a Force Majeure Event then, subject to that Party complying with clauses 21.1, 21.2(b) and 21.4, performance or receipt of those obligations is suspended to the extent that performance or receipt is prevented by that Force Majeure Event.
- (b) The affected Party must provide the other Party with regular updates as to the affected Party's circumstances and the impact of the Force Majeure Event during the time that it is prevented from performing its, or receiving the benefit of the other Party's, obligations under the Agreement and in any event must provide the other Party with an update within 5 Business Days of a request at any time by the other Party.
- (c) The affected Party must notify the other Party in writing as soon as, and in any event within 5 Business Days of, the Force Majeure Event ceasing to prevent it from performing or receiving those obligations under this Agreement.

## **21.3 Implications of a Force Majeure Event**

If a Party's obligations are suspended under clause 21.2, then during that period of suspension:

- (a) that Party's actual nonperformance, or delay in performance, of this Agreement resulting from the Force Majeure Event will not be deemed to be a breach of the Agreement; and
- (b) each Party will bear its own costs.

## **21.4 Effect of a Force Majeure Event**

- (a) Within 5 Business Days of receipt by a Party of a notice referred to in clause 21.1, the Parties must meet (either in person or by electronic means) to discuss the steps that the Parties will take to authorize any effects of the Force Majeure Event.
- (b) Irrespective of any other obligations under this clause 21, on and from the date a Party is aware of a Force Majeure Event, that Party must mitigate and authorize the effect of the Force Majeure Event.

## **21.5 Termination**

If a Party is prevented from performing its, or receiving the benefit of the other Party's, obligations under this Agreement in whole or part by a Force Majeure Event for a period in excess of 20 Business Days (or such other period specified in the Agreement Details) then either Party may by notice in writing to the other Party terminate this Agreement.

## **22. NOTICES**

### **22.1 Notices Generally**

Each notice or other communication given under the Agreement:

- (a) must be in writing;
- (b) may be given by an authorised officer or solicitor of a Party; and

(c) must be:

- (i) hand delivered or sent by prepaid post to the address of the recipient specified in the Agreement;
- (ii) sent by email to the address of the recipient as specified in the Agreement and the email must be sent with automatic receipt notification; or
- (iii) sent by facsimile to the facsimile number of the recipient specified in the Agreement,

(d) subject to clause 22.1, is taken to be received:

in the case of hand delivery, on the date of delivery;

- (i)
- (ii) in the case of post, on the third Business Day after posting; and
- (iii) in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the Party sending the email from the recipient;
- (iv) in the case of facsimile, on the date on which the sender's facsimile machine records that the facsimile was successfully transmitted; and

(e) if received after 5:00 pm on a day other than a Business Day, is taken to be received on the next Business Day.

## **22.2 Notices Sent by Email**

With respect to a notice sent by email, the Parties agree that the following applies:

- (a) any text in the body of the email or the subject line will not form part of the notice; and
- (b) an attachment to the email will only form part of the notice if it is in .pdf format or such other format as may be agreed between the Parties from time to time

and with respect to any notice sent by email under or in connection with the Agreement, each Party must ensure that:

- (c) its firewall and/or email server (as applicable) allows messages of up to 25MB to be received' and
- (d) its systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain that cannot or will not be delivered to the recipient.

## **23. Miscellaneous**

### **23.1 Assignment, Novation etc**

- (a) Unless a Party obtains the other Party's prior written consent, a Party must not assign, novate or otherwise deal with any of its rights or obligations under the Agreement.
- (b) Ozgene ARC may subcontract any of its rights or obligations under the Agreement.
- (c) If the Customer is a corporation (other than a public company as defined in the *Corporations Act 2001* (Cth)) the Customer is taken to have assigned the Agreement if:
  - (i) anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Customer to another person; or

- (ii) there is any change in control of the Customer within the meaning of the *Corporations Act 2001* (Cth).

**23.2 Waiver**

- (a) Any waiver by the Customer or Ozgene ARC must be in writing and signed by the Party waiving the right.
- (b) Any waiver by the Customer or Ozgene ARC does not affect its rights in respect of any other breach of the Agreement by the other Party.
- (c) Subject to clause 23.2(a), any delay or failure by the Customer or Ozgene ARC to enforce any right under or in connection with the Agreement or any law will not be construed as a waiver of their respective rights under the Agreement or any law.

**23.3 Entire Agreement**

The Agreement supersedes all prior negotiations, understandings and agreements (whether in writing or not) between the Customer and Ozgene ARC relating to the matters covered by the Agreement and constitute the full and complete agreement between the Customer and Ozgene ARC relating to the matters covered by the Agreement.

**23.4 Rights Are Cumulative**

Unless otherwise stated the rights, powers and remedies in the Agreement are in addition to, and not exclusive of, the rights, powers and remedies existing at law or in equity.

**23.5 Counterparts**

Unless stated to the contrary in the Agreement, the Agreement may be executed in counterparts.

**23.6 Consent**

- (a) Whenever the consent of the Customer is required under the Agreement:
  - (i) that consent may be given or withheld by the Customer in the Customer's absolute discretion and may be given subject to such conditions as the Customer may determine;
  - (ii) the Customer is not required to provide a reason or reasons for giving or refusing its consent; and
  - (iii) Ozgene ARC agrees that any failure by it to comply with or perform a condition imposed under clause 23.6(a) will constitute a breach of a condition by Ozgene ARC under the Agreement.
- (b) Whenever the consent of Ozgene ARC is required under the Agreement:
  - (i) that consent may be given or withheld by Ozgene ARC in the Ozgene ARC's absolute discretion and may be given subject to such conditions as Ozgene ARC may determine;
  - (ii) the Ozgene ARC is not required to provide a reason or reasons for giving or refusing its consent; and
  - (iii) the Ozgene ARC agrees that any failure by it to comply with or perform a condition imposed under clause 23.6 (b)(i) will constitute a breach of a condition by the Ozgene ARC under the Agreement.

**23.7 Right of Set Off**

Ozgene ARC may set off or deduct any amount claimed by Ozgene ARC from any amount owing by

Ozgene ARC to the Customer on any account under the Agreement or any other contract between the Customer and Ozgene ARC.

**23.8 Costs**

Unless otherwise stated, the Customer must comply with all obligations of the Customer at the Customer's cost.

The Customer and the Ozgene ARC must pay their own legal and other costs in connection with the preparation and signing of the Agreement.

**23.9 Applicable Law**

The Agreement is governed by the laws of the State of Western Australia. The Customer and Ozgene ARC irrevocably submit to the exclusive jurisdiction of the courts of Western Australia.

**23.10 Further Assurance**

The Customer and Ozgene ARC must do everything reasonably necessary, at that Party's expense, including signing further documents, to give full effect to, perfect or complete, the Agreement.

**23.11 Dispute Resolution**

(a) The Parties agree to use reasonable efforts to resolve by negotiation any problem that arises between them under the Agreement. Neither Party will resort to legal proceedings, or terminate the Agreement, until the following process has been exhausted, except if it is necessary to seek an urgent interim determination.

(b) If a problem arises (including a breach or an alleged breach) under the Agreement which is not resolved at an operational level or which is sufficiently serious that it cannot be resolved at the operational level, a Party concerned about the problem may notify the other. Management representatives or each of the Parties will then endeavour in good faith to agree up a resolution.

**23.12 Relationship**

Nothing in the Agreement may be construed to make a Party a partner, agent, employee or joint venturer of the other Party.

## Schedule A

### Jackson Products Terms and Conditions

If the Customer is purchasing Jax® Mice or Licensed Services these additional Terms and Conditions apply:

For the purpose of this Schedule A, the following Definitions apply:

#### 1. DEFINITIONS AND INTERPRETATION

**Conditions of Use** means the limitation on Customer use of JAX® Mice and Licensed Services as described on Jackson's website at [www.jax.org](http://www.jax.org) on the date the Customer placed the order for Jax® Mice or Licensed Services.

**Confidential Information** means any and all non public information and includes, without limitation, information relating to the identity, contact information, order histories, profile information and special needs of the Customer and the people and organisations with whom the Ozgene ARC has business relationships and those relationships.

**Customer** means individuals or forprofit or non-profit organisations approved by Jackson which conduct biomedical research located within Australia, Indonesia, Malaysia, New Zealand and Singapore for use of Licensed Propagation Products and/or located within Australia or New Zealand for Licensed Services.

**Customer Information** means Customer ordering histories of Jax® Mice and/or Licensed Services.

**Jackson** means the Jackson Laboratory, a non-profit corporation organised and existing under the laws of the State of Maine, with offices at 600 Main Street, Bar Harbour, Maine 04609 USA.

**Jax® Mice** means all types and strains of mice which originated from Jackson or at any time were bred and distributed by Jackson, including any descendants of those mice derived by inbreeding or crossbreeding with mice from Jackson or other sources.

**Licensed Services** means importation, quarantine services, holding and health monitoring services JAX® Mice strains imported from JACKSON as requested by and on behalf of Customers in Australia or New Zealand who are preapproved by JACKSON as qualified to purchase JAX® Mice strains.

#### 2. CUSTOMER'S OBLIGATIONS

2.1 The Customer is to provide evidence to Ozgene ARC as to its status as a scientific researcher and/or teaching facility.

2.2 The Customer will not use, or intend to use, Jax® Mice or Licensed Services for any purpose other than internal research activities.

#### 3. SUPPORT

Jackson may provide direct support and advice to Customers using JAX® Mice as Jackson determines appropriate. Ozgene ARC will cooperate with these efforts and assist Jackson in maintaining unrestricted access to relevant persons within each Customer organisation.

#### 4. CONFIDENTIAL INFORMATION AND PUBLICITY

4.1 Ozgene ARC will maintain and allow Jackson access to Customer Information.

4.2 Ozgene ARC may disclose the Customer's Confidential Information to Jackson as required from time to time.



4.3 Jackson may use Customer Information as needed to assess, support, and ensure Customer satisfaction with purchases and use of JAX® Mice and Licensed Services.

4.4 Jackson may disclose Customer Information to a third party if required by third party license agreements, by grant obligations, or by law.

## 5. INDEMNIFICATION AND LIABILITY

5.1 Jackson, its trustees, directors, officers and employees make no representations and extend no warranties of any kind to the Customer or to any other person. To the extent permitted by applicable law, Jackson hereby disclaims all warranties, express and implied, including but not limited to any implied warranties of merchantability, fitness for a particular purpose and absence of latent or other defects, whether or not discoverable, and nothing in this agreement shall be construed as a representation or a warranty by Jackson that the practice of any license granted hereunder by Ozgene ARC, its Customers, or any other person shall not infringe patent rights of any third party and nothing in this Agreement shall be construed as a representation or warranty by Jackson that the propagation, distribution or use of Jax® Mice will not infringe the intellectual property rights of any third party.

5.2 In no event shall Jackson, its trustees, directors, officers, employees and affiliates be liable for indirect, incidental, exemplary, special or consequential damages of any kind, including economic damage or injury to property or loss of use, profits, anticipated profits, goodwill or savings arising out of or in connection with this Agreement or the use of Jax® Mice sold or distributed pursuant to this Agreement, regardless of whether such liability arises from a claim based in contract, warranty, tort (including negligence), product liability or otherwise even if Jackson shall be advised, shall have other reason to know, or in fact shall know of the possibility of such loss or damage.

## 6. JACKSON'S RIGHTS

Although not named as a party to this Agreement, for the purposes of section 11 of the *Property Law Act 1969*, Jackson is a party who can enforce rights against the Customer under this Agreement.

## 7. GENERAL

As between Jackson and the Customer this Agreement and all disputes arising under or in connection with it shall be governed by and construed in accordance with the laws of the State of Maine. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.

## END OF GENERAL TERMS AND CONDITIONS