OXGENE®
A WuXi Advanced Therapies Company

# TERMS AND CONDITIONS - TESSA SYSTEM EVALUATION

## 1. SCOPE, DEFINITIONS AND INTERPRETATION

**1.1** **Scope.** Materials are provided for evaluation purposes only expressly subject to these terms and conditions. It is a condition of this evaluation that the Recipient provides OXGENE with the Results as specified below.

**1.2** **Definitions**. In this Agreement the following words and expressions have the meanings specified:

**Affiliate** means any company or other entity which directly or indirectly controls, is controlled by or is under common control with a party, where 'control' means the ownership of more than 50% of the issued share capital or other equity interest or the legal power to direct or cause the direction of the general management and policies of such party or such company or other entity;

**Agreement** means these Terms and Conditions;

**Applicable Law** means all applicable provisions of any and all laws, regulations, administrative codes, orders, decisions, injunctions, awards, judgments, permits and licences of or from any governmental or non-governmental authority, agency, undertaking or body (whether present or future and in any territory) which has any jurisdiction in respect of or relevance to the applicable party (or its Affiliates) and its business and/or the relevant provisions of this Agreement, including any applicable data protection laws;

**Business Day** means Monday to Friday (inclusive) except bank or public holidays in England;

**Cells** means the WXATUS0028 cells supplied for evaluation under this Agreement;

**Claim** means any and all demands, claims, actions, suits, proceedings or investigations, judgments, and liability (whether criminal or civil, in contract, tort, or otherwise) for losses, damages, legal costs, and other expenses of any nature whatsoever and all costs and expenses (including legal costs) incurred in connection therewith;

**Confidential Information** means: (a) all non-public, proprietary information provided during the term of this Agreement by either party to the other in oral or documentary form (including all notes, extracts or copies of the same) or by way of, or derived from, models, biological or chemical materials (including, in the case of OXGENE, the Materials) or other tangible form, whether or not it is stated to be confidential at the time of disclosure; and (b) the terms of this Agreement;

**Effective Date** means the date the Materials are shipped to Recipient;

**Evaluation Plan** means Recipient's plan of work for evaluation and use of the Materials, a copy of which is to be supplied to OXGENE on or promptly after the Effective Date of this Agreement;

**Fee** means the price of the Materials ordered, as communicated by OXGENE to Recipient;

**Intellectual Property Rights** means patents (including in the case of OXGENE the Patent Rights), rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**Location** means Recipient's shipping address;

**Loss** means any and all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs, (calculated on a full indemnity basis), and all and other professional costs and expenses);

**Materials** means the TESSA Product and the Cells supplied for evaluation subject to this Agreement, including without limitation all constructs, strains, replications, progeny, derivatives, modifications, portions, improvements or components obtained from the TESSA Product and/or the Cells or as a result of their use;

**Patent Rights** means those rights claimed in one or more pending or issued patents held by OXGENE and any divisional, continuations, continuation-in-part applications, and continued prosecution applications (and their relevant international equivalents) of the patent applications and resulting applications of the same, reissues, re-examinations or extensions worldwide related to use of an: (a) adenoviral vector containing a regulatable major late promoter; (b) an adenoviral vector containing a Rep coding sequence that does not contain a promoter upstream; (c) a cell co-infected with an AAV and an adenoviral vector containing either (a) or (b), or both;

**Publication** means any non-confidential disclosure whether by written or oral description, by use or otherwise including, without limitation, by the submission of abstracts, papers, poster presentations or other materials at conferences or seminars, in journals, or in patent or utility model applications, or in any other circumstances or by any other means, and the terms "to Publish" and "Publication" are to be construed accordingly;

**Recipient** means the counter party placing an order for the Materials;

**Results** means all information, know-how, data and results arising from Recipient's evaluation of the Materials, including but not limited to the Evaluation Plan, target outcomes and TESSA Product performance data, but does not include information identifying any proprietary Recipient gene of interest;

**Term** means the period during which the Materials may be evaluated, starting on the date of delivery of the Materials and lasting for four (4) months, or such other period as may be agreed and stated on the relevant invoice for the Materials;

**TESSA Product** means OXGENE's proprietary Tet Enabled Self Silencing Adenoviral (TESSA) technology, protected by the Patent Rights and other Intellectual Property Rights, that includes, without limitation, adenoviral vectors (including TESSA-AAV-EGFP and TESSA-RepCapX) that embody the TESSA technology.

**1.3** **Interpretation.** In this Agreement:

(a) the headings are used for convenience only and shall not affect its interpretation;

(b) references to persons shall include incorporated and unincorporated persons; references to the singular include the plural and vice versa; and references to the masculine include the feminine;

(c) references to the parties, clauses and Schedules mean the parties to, the clauses of, and the schedules to, this Agreement;

(d) references in this Agreement to termination shall include termination by expiry;

(e) where the words 'includes' or 'including' are used they shall be understood as meaning 'includes without limitation' and 'including without limitation', respectively; and

(f) defined words and expressions shall be construed accordingly to include references to their cognate words and expressions.

## 2. SUPPLY AND USE OF MATERIALS

**2.1** Recipient may place an order for the Materials by sending an email or purchase order or through OXGENE's website. Each order is an offer by Recipient to purchase the Materials specified in the order subject to this Agreement. OXGENE's acceptance of such order will take place when an email and/or invoice is sent to Recipient to accept it. OXGENE will inform Recipient by email if OXGENE is unable to supply the Materials and OXGENE will not process the order, or if Recipient has already paid for the Materials, OXGENE will refund the full amount to Recipient as soon as reasonably practicable.

**2.2** In consideration of the Fee, OXGENE will provide to Recipient the quantity of Materials ordered. OXGENE will invoice Recipient for the Fee (plus any applicable VAT or other sales tax) on or after the Effective Date and Recipient will pay the Fee to OXGENE within thirty (30) days of the date of invoice.

**2.3** The provision of the Materials does not confer any right, whether expressly, by implication, or otherwise, to sell, resell, donate, deposit, or transfer the Materials. Recipient shall not distribute, disclose, release, sell, offer for sale, provide, market, advertise, donate, or deposit the Materials, or any method or process or service relating to the Materials, or any material that could not have been made but for Recipient's use of the Materials, in each case whether or not for profit.

**2.4** Recipient may use the Materials at the Location during the Term for internal evaluation purposes only, subject always to the prohibitions and restrictions in this clause 2.

**2.5** THE USE OF THE MATERIALS IS EXPRESSLY PROHIBITED IN: (A) ANY CLINICAL HUMAN APPLICATION OR USE, INCLUDING, WITHOUT LIMITATION, THERAPEUTIC, DIAGNOSTIC AND PROGNOSTIC USE; (B) ANY HUMAN GERMLINE MODIFICATION, INCLUDING MODIFYING THE DNA OF HUMAN EMBRYOS OR HUMAN REPRODUCTIVE CELLS; (C) ANY IN VIVO VETERINARY OR LIVESTOCK USE; OR, (D) THE MANUFACTURE, DISTRIBUTION, IMPORTATION, EXPORTATION, TRANSPORTATION, SALE, OFFER FOR SALE, MARKETING, PROMOTION OR OTHER EXPLOITATION OR USE OF THE MATERIALS, OR AS, A TESTING SERVICE, THERAPEUTIC OR DIAGNOSTIC FOR HUMANS OR ANIMALS. THE PROHIBITIONS IN (A) AND (C) ABOVE DO NOT APPLY TO THE USE OF AAV VECTORS MANUFACTURED USING THE MATERIALS.

**2.6** Recipient:

(a) is solely responsible for using the Materials in compliance with all Applicable Laws and for obtaining all permits, licenses or other approvals required by any governmental authority in connection with Recipient's receipt, handling, storage, disposal, transfer, and use of the Materials;

(b) shall not use the Materials in experiments wholly or partly funded by any third party, unless such third party is a governmental funding body;

(c) shall not use the Materials for financial gain (including without limitation, money, in kind goods or services, property (tangible or intangible), or equity);

(d) **shall not propagate Materials or expose Materials to: (i) Doxycycline or Tetracycline; or (ii) any analogue or chemical derivative of Tetracycline or Doxycycline; or (iii) shRNA or siRNAs recognising the TetR coding sequence;**

(e) may, notwithstanding (d) above, expose AAV preparations manufactured using the Materials to Doxycycline for the sole and limited purpose of assessing potential progeny of Materials within an AAV preparation. Materials must not be exposed to Doxycycline for any other purpose, including for the purpose of AAV manufacture or production;

(f) shall not (and shall not permit any other party to) purify or ligate the Material DNA, create any genetically modified or other derivatives of the Materials, sequence or otherwise determine or alter the structure of the Materials, or attempt to reverse engineer or design around the Materials, or develop formulations of the Materials;

(g) shall not (and shall not permit any other party to) use the Cells to establish any cell banks;

(h) shall not (and shall not permit any other party to) attempt to re-identify the individual donors associated with any of the Materials comprising human tissue, or otherwise create, access, disclose or de-code any personally identifiable information relating to such Materials or the applicable donor.

**2.7** Recipient will not file any patent application claiming (i) the Materials or any part thereof, or (ii) any process using the Materials or any part thereof, without prior written permission from OXGENE.

**2.8** Recipient will:

(a) keep the Materials (and procure that the Materials are kept) secure at the Location;

(b) ensure that no one other than its own employees has access to the Materials, unless it has first obtained OXGENE's prior written consent to the contrary;

(c) use the Materials in accordance with appropriate industry standards of skill and care; and

(d) ensure compliance with all Applicable Law governing the transportation, keeping and use of the Materials.

**2.9** Recipient will not, without the prior written consent of OXGENE, transfer any of the Materials to any third party or allow them to be removed from the Location.

**2.10** The Materials will at all times remain the property of OXGENE. Recipient will promptly destroy, with written certification of destruction, any Materials remaining in its possession or under its control at the end of the Term or upon any termination of this Agreement.

**3. CONFIDENTIAL INFORMATION**

**3.1** If either party (**Disclosing Party**) provides any Confidential Information to the other (**Receiving Party**), the Receiving Party agrees:

(a) to keep that Confidential Information in strict confidence and take all reasonable precautions to prevent its unauthorised disclosure to any third party;

(b) not to disclose any of that Confidential Information in whole or in part to any third party without the prior written consent of the Disclosing Party or as otherwise expressly permitted by any other clause of this Agreement;

(c) not to use that Confidential Information for any purpose other than the purpose for which it was disclosed (which in the case of Recipient is the evaluation of the Materials), without the prior written consent of the Disclosing Party; and

(d) to inform the Disclosing Party immediately if it becomes aware of the possession, use or knowledge of any of the Confidential Information by an unauthorised person and to provide any assistance in relation to such unauthorised possession, use or knowledge that the Disclosing Party may reasonably require.

**3.2** The obligations of confidence and non-use set out in clause 3.1 will not apply to any Confidential Information that the Receiving Party can show by reference to written records:

(a) was, at the time of disclosure to the Receiving Party, published, known publicly or otherwise in the public domain;

(b) is, after disclosure to the Receiving Party, published or becomes known publicly or otherwise becomes part of the public domain, through no fault of the Receiving Party;

(c) was, prior to the time of disclosure to the Receiving Party, known to and at the free disposal of the Receiving Party;

(d) is, at any time, disclosed to the Receiving Party by a third party in circumstances in which there has been no breach of an obligation of confidence owed to the Disclosing Party;

(e) is independently developed by or on behalf of the Receiving Party, without use of or reliance on the Disclosing Party's Confidential Information;

except that the above exceptions do not extend to circumstances where the Confidential Information includes information that was previously in the public domain, but where the novel collection of that

information is separately protectable by the law of confidence.

**3.3** The Receiving Party will not be in breach of its obligations under clause 3.1 to the extent that it is required to disclose any Confidential Information under any law (provided in the case of any disclosure under any freedom of information legislation that none of the exceptions under the relevant legislation applies to the information disclosed) or by or to a court or other public, regulatory or financial authority that has jurisdiction over it, provided that the Receiving Party, where lawful to do so, gives the Disclosing Party written notice prior to disclosing any of the Confidential Information and that the disclosure is made only to the extent required and for the purpose of complying with the requirement and that the Receiving Party takes all reasonable measures to ensure, as far as it is possible to do so, the continued confidentiality of any Confidential Information so disclosed.

**3.4** The Confidential Information will at all times remain the property of the Disclosing Party. The Receiving Party will, at the written request of the Disclosing Party at any time:

(a) promptly return to the Disclosing Party all of the Confidential Information which is in its possession or under its control (including all copies);

(b) permanently delete all electronic copies of the Confidential Information from its computer systems, possession or control; and

(c) provide to the Disclosing Party a certificate signed by an authorised officer of Recipient confirming that the obligations in clauses 3.4(a) and 3.4(b) have been met.

**3.5** As an exception to its obligations under clause 3.4(a)and (b), the Receiving Party may retain copies of Confidential Information (i) archived in the ordinary course of business or (ii) in its legal files, in each case to be used solely for the purpose of ensuring compliance with its obligations under this Agreement, and provided always that all such retained Confidential Information remains subject to the confidentiality obligations set out in this clause 3.

**3.6** The confidentiality obligations in this clause 3 will survive the termination or expiration of this Agreement for a period of seven (7) years thereafter.

**4. RESULTS AND PUBLICATION**

**4.1** Recipient will share the Results with OXGENE at the end of the Term. If requested by OXGENE, the parties will promptly convene a meeting to discuss and evaluate the Results.

**4.2** Recipient may not disclose to any third party or Publish any Results or otherwise refer to the evaluation of the Materials or make any reference to OXGENE or the Materials (including the TESSA Product) in any Publication, without obtaining the prior written consent of OXGENE to, and to the content of, any such Publication, which consent shall not unreasonably be withheld, delayed or conditioned.

**4.3** Recipient will acknowledge OXGENE as the source of the Materials in any Publication for which consent has been given in accordance with standard practice for such publications and in a form to be approved in advance by OXGENE.

**4.4** OXGENE may use the Results in aggregated, anonymised form, and without identifying Recipient, for promotional purposes, including use on the websites of OXGENE and its Affiliates upon Recipient's prior written consent, which consent shall not unreasonably be withheld, delayed or conditioned.

**5. INTELLECTUAL PROPERTY RIGHTS**

**5.1** This Agreement does not affect the ownership of OXGENE or Recipient background Intellectual Property Rights. No licence under any OXGENE Intellectual Property Rights is granted or implied by this Agreement other than the limited, non-exclusive right for Recipient to have possession of and use the Materials and OXGENE Confidential Information in accordance with the terms of this Agreement. No use of the Materials by or for Recipient will (or will purport to) assign or transfer any title or Intellectual Property Rights in or to the Materials to Recipient or to any third party.

**6. LIABILITY AND INDEMNITY**

**6.1** Recipient acknowledges that the Materials are experimental in nature and that OXGENE makes no representation and gives no warranty or undertaking, and excludes all warranties implied by law, in relation to them. As examples, without limiting the foregoing, OXGENE gives no warranty:

(a) that it owns all necessary property and other rights in the Materials or that their use will not infringe any Intellectual Property Rights or other rights of any third party; or

(b) that the Materials are of satisfactory quality or are fit for any particular purpose, have been developed with reasonable care and skill, have been tested for the presence of pathogens or otherwise, or are viable, safe, or non-toxic.

**6.2** OXGENE gives no warranty or representation as to the accuracy or completeness of any of its Confidential Information provided to Recipient.

**6.3** Nothing in this Agreement shall limit or exclude the liability of either Party for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation, or any other liability which cannot be limited or excluded by Applicable Law.

**6.4** Subject to clause 6.3, the liability of OXGENE to Recipient whether in contract, tort (including negligence) or otherwise, in relation to the supply to Recipient of the Materials and Confidential Information or their use or keeping by Recipient or by any other person, or the consequences of their use, is excluded to the maximum extent permitted under Applicable Law.

**6.5** Recipient will indemnify, defend and hold harmless OXGENE and its current and former directors, officers, employees, agents and representatives and their respective successors, heirs and assigns (**Indemnified Parties**) and keep them fully and effectively indemnified against any and all Loss suffered or incurred by or imposed upon any of the Indemnified Parties in connection with any Claim arising out of or related to the use of Materials and/or OXGENE Confidential Information by the Recipient, the exercise of any rights granted to Recipient under this Agreement, or any breach of this Agreement by Recipient, including, without limitation, any Claim arising from injury to Recipient's employees and third parties or infringement of third party Intellectual Property Rights; except to the extent that: (a) such Loss arises from a material breach of this Agreement by OXGENE; (b) gross negligence or willful misconduct on the part of OXGENE in relation to the Materials; or (c) the Materials as supplied under this Agreement infringe the intellectual property rights of any third party and give rise to such Loss; save that the foregoing exceptions will not apply if and to the extent that the Materials are customised for Recipient and the Loss is attributable in whole or in part to such customisation.

## 7. GENERAL

**7.1** **Notices:** Any notice to be given under this Agreement must be in writing, addressed to the other party's business address (or such other address as is notified to the other party in accordance with this clause), and may be delivered to the other party or parties by any of the methods set out in the left hand column below, and will be deemed to be received on the corresponding day set out in the right hand column:

| **Method of service** | **Deemed day of receipt** |
|---|---|
| By hand or courier | the day of delivery |
| By pre-paid first class post | the second Business Day after posting |
| By recorded delivery post | the next Business Day after posting |
| By email, to the email address provided below | the Business Day on which it was received by the recipient |

A copy of all notices addressed to OXGENE should be sent by email to legal@oxgene.com.

**7.2** **Assignment:** Neither party may assign or transfer this Agreement as a whole, or any of its rights or obligations under it, without first obtaining the written consent of the other party (which may be given or withheld at the absolute discretion of the party from which consent is sought) except that OXGENE may, without consent, assign all of its rights and obligations under this Agreement to an Affiliate or to any successor to the whole or relevant part of its business.

**7.3** **Illegal/unenforceable provisions:** If the whole or any part of any provision of this Agreement is void or unenforceable in any jurisdiction, the other provisions of this Agreement and the rest of the void or unenforceable provision will continue in force in that jurisdiction, and the validity and enforceability of that provision in any other jurisdiction will not be affected.

**7.4** **Waiver of rights:** If a party fails to enforce, or delays in enforcing, an obligation of the other party, or fails to exercise, or delays in exercising, a right under this Agreement, that failure or delay will not affect its right to enforce that obligation or constitute a waiver of that right. Any waiver of any provision of this Agreement will not, unless expressly stated to the contrary, constitute a waiver of that provision on a future occasion.

**7.5** **No agency:** Nothing in this Agreement creates, implies or evidences any partnership or joint venture between the parties, or the relationship between them of principal and agent. Neither party has any authority to make any representation or commitment, or to incur any liability, on behalf of the other.

**7.6** **Entire agreement:** The Agreement constitutes the entire agreement between the parties relating to its subject matter, and applies to the exclusion of any other terms that Recipient at any time seeks to impose or incorporate (including without limitation those contained in a purchase order or payment confirmation), or which are implied by trade, custom, practice or course of dealing, and all such terms shall be null and void and of no effect. Each party acknowledges that it has not entered into this Agreement on the basis of any warranty, representation, statement, agreement or undertaking except those expressly set out in this Agreement. Each party waives any claim for breach of this Agreement or any right to rescind this Agreement in respect of any representation which is not an express provision of this Agreement. However, this clause does not exclude any liability which either party may have to the other (or any right which either party may have to rescind this Agreement) in respect of any fraudulent misrepresentation or fraudulent concealment prior to the execution of this Agreement. Nothing in this Agreement will prevent either party from entering into a similar relationship with any third party.

**7.7** **Amendments:** No variation or amendment of this Agreement (including the Schedules) will be effective unless it is made in writing and signed by an authorised representative of each party.

**7.8** **Third parties:** No one except a party to this Agreement has any right to prevent the amendment of this Agreement or its termination, and no one except a party to this Agreement may enforce any benefit conferred by this Agreement, unless this Agreement expressly provides otherwise. The Indemnified Parties may directly enforce the indemnity in clause 6.4.

**7.9** **Survival:** Any rights and obligations under this Agreement that are expressed to survive its expiration or termination, or by their nature or context of which it is contemplated that they should survive, shall survive the expiry or termination of this Agreement.

**7.10** **Governing law:** This Agreement is governed by, and is to be construed in accordance with, the law of England and Wales. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Courts of England and Wales will have exclusive jurisdiction to deal with any dispute or claim which has arisen or may arise out of, relating to, or in connection with this Agreement, (including any question regarding its existence, validity, breach or termination), except that either party may bring proceedings for an injunction or other equitable relief in any jurisdiction.