

AG-126T

Texas A&M AgriLife – Administrative Services
Contract Office
(Revised July 2018)



**TEXAS A&M VETERINARY MEDICAL DIAGNOSTIC LABORATORY
FACILITY USE ADDENDUM**

The following terms and conditions are incorporated into and form a part of the agreement ("Agreement") between Texas A&M Veterinary Medical Diagnostic Laboratory ("TVMDL") a member of the Texas A&M University System ("TAMUS"), an agency of the State of Texas _____ ("FACILITY") for the event scheduled on _____ ("Event").

To the extent applicable, in accordance with *Texas Education Code* Section 51.9335(h), any provision required by applicable Texas law to be included in or deleted from the Agreement shall be deemed to be automatically incorporated into or deleted from (as the case may be) the Agreement by operation of law.

DIRECT BILL ACCOUNT:

TVMDL is an agency of the State of Texas and cannot, by state law, make advance payments for goods or services before their delivery to the agency. All charges accrued and payable by TVMDL will be applied to the master account and direct billed. If an existing direct bill account is not already established and on file, TVMDL will submit information to establish a direct bill account prior to the Agreement start date. If FACILITY fails to approve a master account for TVMDL and TVMDL does not make alternative arrangements for payment, this Agreement may be terminated by TVMDL without any liability or penalty, including cancellation or attrition charges.

PAYMENT OF MASTER ACCOUNT:

The outstanding balance of TVMDL's direct bill account, excluding disputed charges, will be due following the event and payable within thirty (30) days from receipt of invoice. Upon resolution of any disputed charges, FACILITY shall invoice such remaining charges to TVMDL. Payment of the revised charges shall be payable within thirty (30) days of receipt of invoice. All past due amounts will be subject to a finance charge in accordance with the Texas Prompt Payment Act, Chapter 2251, *Texas Government Code*.

TAX EXEMPT: TVMDL, an agency of the State of Texas, is exempt from State of Texas Sales Tax and Federal Excise Tax. Tax Exempt ID number 26-3850570.

CANCELLATION/ATTRITION CHARGES:

A. In the event the Agreement requires payment of cancellation fees or attrition charges (for failure to meet minimum room nights or revenue), such fees shall be reasonable and shall not exceed actual damages. FACILITY shall be required to make good faith efforts to mitigate its damages by attempting to resell, on a last room basis, any accommodations subject to cancellation/attrition fees, thereby reducing FACILITY's damages and TVMDL's fees due under the Agreement. Resold space will be credited to reducing any obligations that TVMDL may have incurred. TVMDL will not pay any cancellation/attrition fees until after the scheduled departure date. A copy of FACILITY's occupancy report, concerning the space reserved by TVMDL for the dates cancelled/not used by TVMDL, shall be delivered to TVMDL within ten (10) business days of scheduled departure date. TVMDL reserves the right to audit FACILITY's records to determine the amount of actual damages resulting from attrition. Any cancellation fee will be

waived should TVMDL reschedule an event of similar size/anticipated income at the FACILITY to arrive within 12 months of the date of the canceled event.

B. TVMDL, at any time prior to the arrival date with written notice, may cancel the Agreement with FACILITY without liability or penalty, in the event one or more of the following occur:

1. A force majeure event as described below, renders either party's performance inadvisable, impossible, or is materially affected. In the event of cancellation under this Item 1, FACILITY agrees to return any deposits paid by TVMDL. In the event TVMDL decides to continue with its reserved use of the FACILITY despite such circumstances, FACILITY will waive any fees related to a reduced-sized program or event including, but not limited to, any food and beverage attrition fees and space rental.
2. There is a change in ownership or management of the FACILITY prior to the scheduled arrival date.
3. FACILITY enters into bankruptcy proceedings, becomes insolvent or subject to foreclosure, or takes any other like action for the benefit of creditors or debtors prior to the scheduled arrival date.

MANDATORY STATE AGENCY CERTIFICATIONS AND PROVISIONS:

A. **ELIGIBILITY CERTIFICATION.** Pursuant to Section 2155.004, *Texas Government Code*, FACILITY certifies it is not ineligible to receive the specified Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

C. **DEBTS OR DELINQUENCIES.** Pursuant to Section 2252.903, *Texas Government Code*, FACILITY agrees that any payments owing to FACILITY under the Agreement may be applied directly toward certain debts or delinquencies that FACILITY owes the State of Texas or any agency of the State of Texas regardless of when it arose, until such debt or delinquency is paid in full.

D. **CHILD SUPPORT CERTIFICATION.** Pursuant to Section 231.006, *Texas Family Code*, the FACILITY certifies that it is not ineligible to receive the specified award of or payment(s) under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

E. **TEXAS GOVERNMENT CODE CHAPTER 2270.** TVMDL is prohibited from contracting with any "company", for goods and services unless the following verification is included in the Agreement. By executing this Agreement, the FACILITY certifies it does not and will not, during the performance of the Agreement, boycott Israel. FACILITY acknowledges the Agreement may be terminated if this certification is inaccurate.

F. **TEXAS GOVERNMENT CODE, CHAPTER 2252.** Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, FACILITY certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. FACILITY acknowledges the Agreement may be terminated if this certification is inaccurate.

G. **CONFLICT OF INTEREST:** By executing this Addendum, FACILITY and the person signing on behalf of the FACILITY certifies,

and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of The A&M System or The A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by The A&M System, has direct or indirect financial interest in the award of the Agreement, or in the services to which the Agreement relates, or in any of the profits, real or potential, thereof.

INAPPLICABLE PROVISIONS: None of the following provisions, if they appear in the Agreement, shall have any effect or be enforceable against TVMDL: (i) requiring TVMDL to maintain any type of insurance either for TVMDL's benefit or for FACILITY's benefit (see below); (ii) renewing or extending the initial Agreement term or automatically continuing or renewing the original Agreement term; (iii) binding TVMDL to any arbitration, to the decision of any arbitration board, commission, panel or other entity, or to any other alternative dispute resolution other than is provided below.

LIMITATIONS: The parties are aware that there are constitutional and statutory limitations on the authority of TVMDL (a state agency) to enter into certain terms and conditions of the Agreement, including, but not limited to, authorizations of the placement of liens on TVMDL's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees or costs; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"). Any Agreement terms and conditions related to the Limitations will not be binding on TVMDL except to the extent authorized by the laws and Constitution of the State of Texas.

LIABILITY AND INSURANCE: It is the stated policy of TVMDL not to acquire commercial general liability insurance for torts committed by employees of TVMDL who are acting within the scope of their employment. Rather, FACILITY must look to the Texas Tort Claims Act for relief with respect to property damage, personal injury, and death proximately caused by the wrongful act or omission or negligence of TVMDL or its employees, acting within the scope of their employment. TVMDL does not provide insurance coverage or accept liability for the intentional or negligent acts or omissions of guests, invitees, and other persons not employed by TVMDL.

DISPUTE RESOLUTION: To the extent that Chapter 2260, *Texas Government Code*, is applicable to the Agreement and is not preempted by other applicable law, the dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by TVMDL and FACILITY to attempt to resolve any claim for breach of contract made by FACILITY that cannot be

FACILITY:

Signature: _____
Printed Name: _____
Title: _____
Date: _____

resolved in the ordinary course of business. FACILITY shall submit written notice of a claim of breach of contract under this Chapter to the chief business officer of TVMDL, who shall examine FACILITY's claim and any counterclaim and negotiate with FACILITY in an effort to resolve the claim. The parties specifically agree that (i) neither the execution of the Agreement by TVMDL nor any other conduct, action, or inaction of any representative of TVMDL relating to the Agreement constitutes or is intended to constitute a waiver of TVMDL's or the state's sovereign immunity to suit; and (ii) TVMDL has not waived its right to seek redress in the courts.

ADDENDUM CONTROLLING: In the event there is a conflict between the terms and conditions of the Agreement and this Addendum, this Addendum will control.

FORCE MAJEURE: Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform under the Agreement due to causes beyond its reasonable control including, but not limited to, a natural occurrence, acts of God, strikes, epidemics, war, riots, civil unrest, fire, sabotage, act of terrorism, air space closure, ground stop(s), a U.S. Department of State Travel Warning or any other similar occurrence.

PUBLIC INFORMATION ACT:

A. FACILITY acknowledges that TVMDL is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.

B. Upon TVMDL's written request, FACILITY will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under chapter 552, *Texas Government Code*, to TVMDL in a non-proprietary format acceptable to TVMDL. As used in this provision, "public information" has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which TVMDL has a right of access.

C. FACILITY acknowledges that TVMDL may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.

GOVERNING LAW: The Agreement, this Addendum and the applicable statute of limitations for any cause of action brought by or against TVMDL pursuant to the Agreement or Addendum will be construed, interpreted, applied and enforced under the laws of the State of Texas without regard to choice of law principles.

COUNTERPARTS/ELECTRONIC SIGNATURES: This Addendum may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of this Addendum, use of a facsimile, e-mail, or other electronic medium shall have the same force and effect as an original signature.

TEXAS A&M VETERINARY MEDICAL DIAGNOSTIC LABORATORY:

Signature: _____
Printed Name: _____
Title: Unit Head
Date: _____