



## TVMDL Service and Price Agreement

<b>Classification</b>	<b>ID</b>	<b>Revision</b>	<b>Effective Date</b>
S-ADM-F	11445	2	4/6/2015 4:08:46 PM

This Service and Price Agreement (“Agreement”) is entered into by and between Texas A&M Veterinary Medical Diagnostic Laboratory (“TVMDL”) with a mailing address of PO Drawer 3040, College Station, Texas 77841, and

Enter Client Name: (“Client”): \_\_\_\_\_ Enter TVMDL Account #: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_

**Services.** TVMDL agrees to provide laboratory testing services to Client as needed and requested. Such testing services include the diagnostic tests and laboratory analysis of specimens provided by Client and requested by Client in this Agreement and on a completed *TVMDL Submission Form for Price Agreements* (“Services”). Pre-printed copies of the *Submission Form for Price Agreements* will be provided to the Client at no charge by TVMDL. Test results will be delivered by TVMDL electronically by email: \_\_\_\_\_ or by fax to \_\_\_\_\_

**Term.** This Agreement is effective beginning \_\_\_\_\_ and shall terminate on \_\_\_\_\_

**Termination.** Either party may terminate this Agreement, without cause, by providing written notice to the other, which will be effective as of the date of receipt, unless otherwise stated in the notice. In the event of termination, TVMDL shall be entitled to receive from Client payment for all Services satisfactorily furnished under this Agreement up to and including the date of termination.

**Pricing.** TVMDL agrees to charge Client for Services in accordance with the price schedule set out below:

Test Name	LIMS Test Abbreviation ( <i>to be entered by TVMDL</i> )	Testing Volume (annual estimate)	Species	Price Per Test

Client requests the special data collection or test modifications indicated below:

Special Reporting or Test Modifications	Additional Price Per Test

In addition to the above prices, TVMDL will charge Client an accession fee of \$ \_\_\_\_\_ per accession submitted under this Agreement.



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Client agrees to pay TVMDL for Services in accordance with the price schedules set out in this Agreement.

**Billing.** TVMDL will issue a monthly statement reflecting the Services provided to Client during the preceding calendar month. Client shall remit payment upon receipt of the monthly statement. Individual invoices will also be sent as appropriate and will specify the tests performed, the quantity, and the cost of the test(s). TVMDL will send all statements and invoices to the Client electronically by email or fax to email/fax number provided herein.

**Payment Terms.** Client agrees to tender full payment to TVMDL upon Client's receipt of a statement or invoice, but in no event any later than thirty (30) calendar days after the date of the statement or invoice is issued. If Client fails or refuses to timely tender the payments to TVMDL, Client will be in default of this Agreement. In addition to any rights and remedies available to TVMDL under law and equity, TVMDL will be excused from further performance of Services for Client pursuant to this Agreement. Client shall tender payment of statements and invoices to the following: TVMDL, PO Drawer 3040, College Station, Texas 77841, or online at <https://tvmdlportal.tamu.edu/Login.aspx>.

**No Warranty.** The Services provided by TVMDL are provided on an "as is" basis without any warranties of any kind to the fullest extent permitted by law, and TVMDL expressly disclaims all and any representations and warranties, express or implied, including, without limitation, any implied warranties or conditions of merchantability, fitness for a particular purpose or need, accuracy, non-satisfactory quality, non-infringement of third party rights and title, or arising from a course of dealing, usage, or trade practice. Client acknowledges that TVMDL does not warrant that the Services will be uninterrupted, timely or error-free, and no conduct or action by TVMDL shall create any warranty not expressly stated in this agreement. If a service or deliverable is found, within six months of invoice therefor, to be defective or inaccurate, TVMDL will provide the service or deliverable again at no cost to Client. This is Client's sole and exclusive remedy under this agreement.

**Limitation of Liability.** Client, in consideration of TVMDL's agreements contained herein, hereby releases the Texas A&M University System ("TAMUS"), TVMDL, and each of their directors, officers, agents and employees from any and all claims, damages, losses, costs (including attorneys' fees and court costs), demands, and causes of action, known and unknown, relating in any way to the Services and this agreement. The release contained herein (a) shall survive the end of the term of this agreement, and (b) shall apply even if a claim, injury or damage is caused in whole or in part by the ordinary negligence or strict liability of TVMDL or TAMUS.

In no event will TVMDL or TAMUS be responsible to Client for any damages or penalties resulting from the Services or this agreement. In no event will TVMDL be liable for any direct, indirect, special, punitive, or consequential damages whatsoever, however caused, arising out of or relating to this agreement, even if TVMDL has been advised of the possibility of such damages, nor will TVMDL's aggregate liability to Client ever exceed the amount paid by Client under this agreement.

**Ownership & Intellectual Property.** All specimens submitted to TVMDL for testing pursuant this Agreement become the property of TVMDL and may be (1) tested/used as part of state/federal surveillance programs; (2) utilized for research purposes; and/or (3) utilized for development of new assays. TVMDL is unable to return specimens to the Client unless prior arrangements are made and approved by TVMDL's Director or designee. Subject to the Client's entitlement to receive a report of any test results as agreed between the Client and TVMDL, any information or intellectual property identified by or arising from TVMDL's handling of the specimens belongs to TVMDL (or TAMUS).

**Work Product & Publications.** All test results and data generated under this Agreement ("Work Product") shall be the property of Client, and Client shall have the right to use, copy, make reproduce, or publish them without restriction and to have and permit others to do the same. Client grants TVMDL an irrevocable, royalty free nonexclusive right to use and publish the Work Product for research and other non-commercial educational purposes so long the Client's information is kept confidential and all findings and/or results are unidentifiable as Client related results.



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**Use of Names.** Client shall not use the names, logos or other likeness of TVMDL or TAMUS, nor of any of its employees, nor any adaptation of either thereof, in any advertising, promotional or sales literature, or other public announcement without prior written consent obtained from TVMDL/TAMUS in each case.

**Breach of Contract Claims.** 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 for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, will be used by the parties to attempt to resolve any claim for breach of contract made by Client against TVMDL that cannot be resolved in the ordinary course of business. The Director of TVMDL shall examine Client's claim and any counterclaim and negotiate with Client in an effort to resolve such claims.

**Independent Contractor.** TVMDL is an independent contractor in the performance of the Services and is not acting as a partner, joint venture, or agent of Client under this Agreement. Nothing in this Agreement shall be construed as an exclusive relationship. TVMDL retains the right to provide the Services for other parties without prior consent of the Client.

**No Third Party Beneficiaries.** Each party acknowledges that there are no third party beneficiaries of this Agreement and that this Agreement is a bilateral contract that inures solely to the benefit of Client and TVMDL.

### **Miscellaneous Provisions**

1. The Agreement and the applicable statute of limitations for any cause of action brought by or against TVMDL pursuant to the Agreement will be governed by the laws of the State of Texas without regard to choice of law principles. Pursuant to Section 85.18, *Texas Education Code*, Brazos County is the mandatory place of venue for suit on or in respect of the Agreement.
2. TVMDL is subject to and must strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*.
3. This Agreement contains the entire understanding of the parties regarding the Services provided hereunder by TVMDL and supersedes all other prior or contemporaneous written or oral agreements between the parties concerning the same subject matter. No waiver, modification, or addition to this Agreement will be binding unless expressed in writing and signed by both parties. Furthermore, this Agreement expressly supersedes any terms and conditions in Client's purchase orders or other documentation and any such terms in Client's purchase orders or other documentation are null and void and without any legal effect.
4. This Agreement may be modified or amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.
5. Client may not assign this Agreement to any party without TVMDL's prior written consent and any attempt to do so shall be void ab initio. TVMDL may assign this Agreement to any party on thirty (30) days' prior written notice to Client.
6. Neither party will be deemed to have waived any of its rights under the Agreement. No delay or omission of a party in exercising or enforcing a right or remedy under the Agreement shall operate as a waiver thereof. If any provision of this Agreement is invalid or unenforceable, the remaining provisions will continue in full force and effect. The parties shall promptly replace any invalid or unenforceable provision with a valid and enforceable provision that has substantially the same legal and economic effect as the invalid or unenforceable provision.
7. Neither party is required to perform any term, condition, or covenant of the Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, and act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of a party and which by due diligence it is unable to prevent or overcome.
8. TVMDL is an agency of the State of Texas and nothing in this Agreement waives or relinquishes the right of TVMDL to claim any exemptions, privileges, or immunities as may be provided by law.



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9. The Agreement 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 the Agreement, use of a facsimile, e-mail, or other electronic medium shall have the same force and effect as an original signature.

Agreed and accepted:

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Client Signature

Date

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TVMDL Section Head

Date

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TVMDL Director or Designee

Date