

## **AGRILIFE TERMS & CONDITIONS OF SERVICE**

The following terms and conditions govern the Services provided by AGRILIFE to CUSTOMER. CUSTOMER's acceptance of the deliverables/results of the Services will be deemed agreement to these terms and conditions. Any and all terms and conditions which are different than or inconsistent with or supplement these terms and conditions are hereby rejected unless otherwise expressly agreed to by an authorized representative of AGRILIFE in writing. For the avoidance of doubt, CUSTOMER understands and agrees these terms and conditions control the Services and no separate agreement will be accepted for the Services.

### **1. DEFINITIONS:**

- a. "CUSTOMER" means the individual or entity requesting Services from AGRILIFE.
- b. "AGRILIFE" means the state agency or agencies providing the Services: Texas A&M AgriLife Research, Texas A&M AgriLife Extension Service, Texas A&M Veterinary Medical Diagnostic Laboratory, and/or Texas A&M Forest Service.
- c. "Materials" means data, information, or other materials provided by CUSTOMER to AGRILIFE for use in Services.
- d. "Services" means services ordered by CUSTOMER pursuant to the respective AGRILIFE rate sheet.
- e. "SYSTEM" means The Texas A&M University System, an agency of the State of Texas.

### **2. HIGH RISK GLOBAL ENGAGEMENTS AND INTERNATIONAL COLLABORATIONS:**

SYSTEM is committed to protecting the integrity of member research and educational programs, including the interests of all involved in contractual relationships and international collaborations to promote equitable collaborations for the invigoration of fundamental scientific inquiry, cultural, and educational opportunities. CUSTOMER represents and warrants neither it nor its parent company (as applicable) are headquartered in a Country of Concern. A "Country of Concern" means the People's Republic of China, the Democratic People's Republic of North Korea, the Islamic Republic of Iran, the Republic of Cuba, the Russian Federation, and the Venezuelan politician Nicolás Maduro, or as otherwise prescribed by SYSTEM Regulation 15.05.04.

### **3. TEXAS A&M INSTITUTE FOR GENOMIC MEDICINE ("TIGM"):** TIGM, an institute under AGRILIFE, offers Services that include but are not limited to transgenic and phenotyping services, cryopreservation, storage of cryopreserved sperm and embryo straws, and rederivation of cryopreserved strains.

- a. Cryopreservation. The cryopreservation protocol developed at The Jackson Laboratory, modified by Dr. Naomi Nakagata of the Center for Animal Resources and Development, is utilized for cryopreservation services. Due to the variability in fertility and sperm quality between mouse lines/strains, AGRILIFE does not guarantee sperm yield and/or viability. CUSTOMER understands and agrees that while there are safeguards for the storage of cryopreserved samples, loss of cryopreserved samples can occur ("Loss"). In the event of Loss is not covered by TIGMs existing insurance policy, and if requested by CUSTOMER, AGRILIFE will attempt to recreate the lost sample strains up to a total cost of \$9,000.00 U.S. for any individual CUSTOMER. It is recommended that CUSTOMER stores two or more straws per strain at a separate storage facility outside of TIGM. In the event of Losses that are not covered by TIGM's existing insurance policy that affect more than one CUSTOMER, AGRILIFE's aggregate financial responsibility will not exceed \$150,000 for each occurrence.

### **4. CONSIDERATION AND PAYMENT:** As consideration for the performance of the Services, CUSTOMER agrees to pay AGRILIFE in accordance with the posted or quoted prices. AGRILIFE will submit an invoice to CUSTOMER following completion of Services. CUSTOMER must make payment to AGRILIFE within thirty (30) days of the invoice date. Payment shall be made as provided on the invoice. Any unpaid balance after thirty (30) days of the invoice will be charged interest at the rate of 18% per month or the highest rate allowed by law. Unless otherwise specified in the posted or quoted pricing, pricing does not include taxes, import tariffs, or similar governmental assessments of any nature, packaging, insurance, or shipment expenses. AGRILIFE may modify the price list from time to time without notice.

If CUSTOMER requests termination of Services after placing an order, CUSTOMER shall reimburse

AGRILIFE for all costs and non-cancelable commitments incurred in the performance of any Services up to the date of termination, such reimbursement not to exceed the posted or quoted prices of Services ordered.

5. **PERIOD OF PERFORMANCE:** AGRILIFE will use reasonable efforts to perform the Services in a timely manner; however, AGRILIFE cannot guarantee a specific completion date for Services or delivery of deliverables/results.
6. **REPRESENTATIONS:** CUSTOMER represents and warrants it has the authority to supply and/or request the use of all Materials provided to AGRILIFE, and that the Materials are safe for the intended use in the Services. CUSTOMER shall indemnify and defend AGRILIFE, SYSTEM, its regents, officers, employees, representatives, agents, and students (each an "Indemnified Party") from and against any and all claims, demands, actions, suits, discovery demands, including, without limitation, third-party subpoenas, government investigations or enforcement actions brought or threatened by a third party against an Indemnified Party and any damages, liabilities, losses, settlements, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees and costs) related thereto alleging that AGRILIFE's use of Materials in performance of Services, infringes or misappropriates a third-party right.
7. **RESULTS & DELIVERABLES:** CUSTOMER acknowledges that the Services may be dependent upon Materials and other factors, which by their nature, are not fault-free or are inherently unpredictable. Any use by CUSTOMER of the deliverables/results from the Services is solely at CUSTOMER's own risk, and CUSTOMER retains the responsibility for determining the adequacy of the deliverables/results from the Services for CUSTOMER's intended use. CUSTOMER will use the deliverables/results from the Services in a safe manner and in accordance with these terms and conditions and all applicable laws and regulations. CUSTOMER shall ensure that deliverables/results from Services are not used in human subjects, whether in clinical trials or otherwise, and whether for therapeutic, preventive, diagnostic, or other purposes, or for any purposes prohibited by applicable laws.
8. **OWNERSHIP:** As required for the Services, CUSTOMER will provide AGRILIFE with sufficient amounts of compounds, materials, animals, substances, devices, and protocols meeting relevant specifications, including health and genetic data ("Customer Materials") with which to perform the Services. CUSTOMER warrants that it owns all rights, title, and interest in or has the right to use Customer Materials and intellectual property related thereto, and that AGRILIFE's use of Customer Materials does not infringe on any third-party rights. Customer Materials will remain the property of CUSTOMER. Any AGRILIFE inventions, techniques, intellectual property, technology, commercial or industrial secrets, regardless of whether patented or registered, used in providing the Services are and will remain the exclusive property of AGRILIFE.
9. **CONFIDENTIALITY:** AGRILIFE will only use Customer Materials for provision of Services to CUSTOMER and for no other purpose. In addition, except as required by law, AGRILIFE will not share with any third-party or publish any deliverables or results of the Services.
10. **PUBLICITY:** CUSTOMER may not use the name of AGRILIFE or SYSTEM, nor of any of its employees or members, nor any adaptation thereof, in any advertising, promotional or sales literature or news release without the prior written consent of AGRILIFE in each instance. CUSTOMER may use the name of AGRILIFE in factual statements that, in context, are not misleading and such statements shall be worded as not to imply endorsement by AGRILIFE or any other member of SYSTEM of the CUSTOMER or a specific product or service of CUSTOMER and shall reflect credit on AGRILIFE, its personnel and activities.
11. **DISCLAIMER OF WARRANTIES:** AGRILIFE provides all Services "as is" without any warranty or condition. CUSTOMER is solely responsible for determining the appropriateness of using the Services and assumes any risks associated with such use. AGRILIFE provides no other warranties or conditions and disclaims any other express, implied, or statutory warranties and conditions, including warranties and conditions of quality, title, merchantability, and fitness for a particular purpose, or that use of any deliverables or Service results will not infringe any patent, copyright, trademark, or other proprietary right.
12. **COMMERCIAL PURPOSES:** CUSTOMER shall not sell, transfer, or make available to a third party the deliverables/results from the Services for Commercial Purposes. "Commercial Purposes" means any activity

for cash or other consideration that includes but is not limited to: (a) use of the deliverables/results or their components in manufacturing or for clinical, therapeutic, diagnostic, or prophylactic purposes, or (b) resale of the deliverables/results or their components or materials made using the deliverables/results or their components.

13. **LIMITATION OF LIABILITY/NON-WAIVER:** AGRILIFE is an agency of the State of Texas and under the Constitution and the laws of the State of Texas possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has authority as is granted to it under the Constitution and the laws of the State of Texas. CUSTOMER expressly acknowledges that AGRILIFE is an agency of the State of Texas and the provision of Services will not be construed as a waiver or relinquishment by AGRILIFE of its right to claim such exemptions, remedies, privileges, and immunities as may be provided by law, including the sovereign immunity of AGRILIFE. For the avoidance of doubt, AGRILIFE will not be liable for penalties or liquidated damages or for special, indirect, consequential, punitive, exemplary, or incidental damages of any type or kind (including, without limitation, lost profits) regardless of whether any such losses or damages are characterized as arising from breach of contract, breach of warranty, tort, negligence, strict liability, or otherwise, even if AGRILIFE is advised of the possibility of such losses or damages, or if such losses or damages are foreseeable.
14. **INDEMNIFICATION:** CUSTOMER shall indemnify and hold harmless AGRILIFE, SYSTEM, and their regents, employees and agents (collectively, the “A&M System Indemnitees”) from and against any third-party claims, damages, liabilities, expense or loss asserted against A&M System Indemnities arising out of any acts or omissions of CUSTOMER or its employees or agents pertaining to the Services, except to the extent such liability, loss or damage arises from an A&M System Indemnitee’s gross negligence or willful misconduct.
15. **PUBLIC INFORMATION ACT:** CUSTOMER acknowledges that AGRILIFE 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 the Services, as well as any other disclosure of information required by applicable Texas law.
16. **EXPORT ADMINISTRATION:** CUSTOMER certifies that CUSTOMER is not a “restricted party” as listed on the Denied Persons List, Entity List, and Unverified List (U.S. Department of Commerce), the Debarred Parties Lists (U.S. Department of State), the Specially Designated Nationals and Blocked Persons List (U.S. Department of Treasury), or any similar governmental lists. **If CUSTOMER is a U.S. entity:** CUSTOMER shall comply with U.S. export control regulations. If CUSTOMER desires to disclose to AGRILIFE any information, technology, or data that is identified on any U.S. export control list, CUSTOMER shall advise AGRILIFE at or before the time of intended disclosure and may not provide export-controlled information to AGRILIFE without the written consent of AGRILIFE. **If CUSTOMER is a foreign (non-U.S.) entity:** AGRILIFE is subject to United States laws and regulations controlling the export of technical data, software, laboratory prototypes, and other commodities, and its performance of Services are contingent on compliance with applicable laws and regulations. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States government or written assurances by CUSTOMER that CUSTOMER will not export data or commodities to certain countries without advance approval of that agency. AGRILIFE neither represents that a license will not be required nor that, if required, it will be issued. CUSTOMER shall comply with all applicable export laws and regulations and may not export or allow the export or re-export of commodities or technical data in violation of those laws or regulations.
17. **FORCE MAJEURE:** AGRILIFE shall not be held liable or responsible to CUSTOMER for failure or delay in fulfilling or performing any Services if and to the extent such failure or delay is caused by or results from causes beyond AGRILIFE’s reasonable control, including, but not limited to, acts of God, strikes, riots, flood, fire, epidemics, natural disaster, embargoes, war, insurrection, terrorist acts or any other circumstances of like character; provided, however, that AGRILIFE has not caused such force majeure event(s), shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance of Services with reasonable dispatch whenever such causes are removed.

- 18. INDEPENDENT CONTRACTOR.** AGRILIFE and CUSTOMER are independent contractors and not partners, joint venturers, agents, or employees of the other party.
- 19. USE OF PURCHASE ORDERS:** CUSTOMER may employ its standard forms of purchase order or acknowledgment of order as needed for the Services, but none of the terms on such form will be applicable except to the extent that the terms specify information required to be furnished by either party for the Services. The terms proposed by any such form are specifically objected to and will not be a basis for any contract or modification of these Terms & Conditions, and neither party should take any action or fail to take any action in reliance on such terms.
- 20. GOVERNING LAW:** All matters pertaining to the Services, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction of these Terms & Conditions, shall be governed and determined by the Constitution and the laws of the State of Texas.