



## SOFTWARE SERVICES AGREEMENT TERMS

Last Updated: February 3, 2021

By execution of an Instinct Science, LLC ("Instinct") Services Order, the Customer set forth on the signature page to the Services Order ("Customer") accepts and agrees to, and intends to be legally bound by, these Software Services Agreement Terms (including any applicable Addendum) (also referred to as this "Agreement"), as of the date of the Services Order.

### 1. Definitions

"Confidential Information" means (i) the terms and conditions of this Agreement or, subject to Section 13, information relating to the relationship between Instinct and Customer and (ii) information, in any form, other than Customer Data or System Data, that is not generally known in the veterinary practice industry or software services industry, made available to the recipient and reasonably considered by the disclosing party as proprietary, provided that, Confidential Information does not include information after it (i) becomes available to the public other than as a result of disclosure by the recipient, (ii) becomes available to recipient on a nonconfidential basis from a third party that is not in breach of a duty to maintain the confidentiality of such information, (iii) is independently developed by recipient without any use whatsoever of Confidential Information, or (iv) is known to recipient at the time of disclosure.

"Customer Data" means data that originates or is stored in Customer's paper systems or its main practice or business information management system or other third party software, including patient records (including prescriptions, refill requests and other pharmacy information) and Privacy Data, that is provided to the Service.

"Damages" means any and all losses, claims, obligations, liabilities, actions, suits, proceedings, demands, judgments, payments, costs and expenses (including court costs, amounts paid in settlement, judgments, and reasonable attorney fees and other expenses) and damages of any kind, nature or description whatsoever.

"Privacy Data" means information provided to the Service that identifies an individual (such as an owner of a patient or user of the Service, including users of the Instinct Shareville or InstinctScripts platforms, including their name, address, telephone number, date of birth or social security number).

"Representatives" means a party's members, shareholders, partners, managers, directors, officers, employees, agents, representatives, advisors and subcontractors.

"Scheduled Commencement Date" means the date scheduled originally in writing by Instinct and Customer for the implementation of the Service at the first of Customer's locations.

"Service" means the Instinct EMR, Instinct Treatment Plan, Instinct Analytics, Instinct Shareville, or InstinctScripts, as applicable pursuant to the Services Order, including maintenance releases and enhancements made available by Instinct from time to time to its customers generally.

"Services Order" means each Instinct Services Order executed by the Customer.

"System Data" means information that originates in the Service, including metadata or analytics, or that is based on or derived by Instinct from Customer Data, so long as such information does not include Privacy Data that identifies any individual.

"Term" means the initial period of twelve (12) months from the Scheduled Commencement Date and consecutive, additional twelve (12) month periods thereafter, until either party terminates this Agreement as provided in Section 9.



“Instinct EMR” means the Instinct Electronic Medical Record (EMR) Software Services which includes Instinct Treatment Plan and Instinct Analytics, as well as exclusive EMR functionality, including Instinct Shareville and InstinctScripts.

“Instinct Treatment Plan” means the Instinct Treatment Plan Software Services and is limited to treatment plan functionality and does not include Instinct Analytics or Instinct EMR functionality.

“Instinct Analytics” means the Instinct Analytics Software Services which is limited to reporting and analytics functionality and does not include Instinct Treatment Plan or Instinct EMR functionality.

“InstinctScripts” means the Instinct Scripts Software Services, whether provided as a separate service or included as part of other Instinct services.

“Instinct Shareville” means the Instinct referring hospital or client communication platform which provides automated record sharing and other functionality to related parties, included as part of other Instinct services.

**2. Service Access.** Instinct grants to Customer the right for Customer to use the Service during the Term. Customer will use the Service solely for Customer’s own, internal business purposes, for the number of users and locations set forth in the Services Order or otherwise approved in writing by Instinct.

**3. Support Services.** Instinct will provide Customer with (i) Service installation, (ii) training at the support level set forth in the Services Order, (iii) user support at the support level set forth in the Services Order, (iv) backup and recovery of System Data and of Customer Data that is hosted through the Service in the event the Service infrastructure becomes inoperative, and (v) Service access through a combination of PIN codes or usernames and passwords pursuant to user access requirements established by Customer, in accordance with Instinct’s standard technical support processes and timeframes and utilizing systems infrastructure that is consistent with commercial practices of providers of similar services under similar conditions.

**4. Fees.** Customer will pay the fees set forth in the Services Order, without setoff or deduction, in accordance with the terms set forth in the Services Order, commencing on the Scheduled Commencement Date or, if applicable, as otherwise set forth in the Services Order. After the initial twelve (12) month period of the Term, Instinct may increase such fees prior to each additional twelve (12) month period during the Term, and Customer’s continued use of the Service will constitute Customer’s acceptance of such adjusted fees. Customer will pay additional fees, from time to time, based on the Service fees set forth in the Services Order, as adjusted, in the event of increases in Customer’s users or locations. For any fees that are based on Customer’s business information (such as invoicing or scripts), Customer will ensure that such information is accurately and completely included in the Service. In the event that Instinct has good reason to believe that such information is not accurate or complete, Instinct will have the right to access and inspect, including through Instinct’s accountants or other representatives, relevant books and records of Customer to determine or verify the fee payments by Customer. Customer will be liable for all costs and expenses (including reasonable attorney fees) incurred by Instinct in connection with collecting any fees or enforcing its rights under this Agreement.

## **5. Customer Responsibilities**

**5.1. Professional Matters.** Customer will be responsible for, and may not rely on the Service or any information produced by the Service in connection with, Customer’s patient care requirements, prescription fulfillment or other services, legal or regulatory requirements or other use. Without limiting the foregoing, Customer will be responsible for all aspects of the medical, diagnostic, therapeutic and related professional services delivered by Customer and of the patient records or other documentation or information related to patient care, billing or other provision of services by Customer. Customer acknowledges that the Service is a



documentation tool only and is not intended to provide diagnosis, practice guidelines, advice or protocols for delivering patient care or medicine and does not constitute medical advice or a substitute for medical knowledge or judgment, all of which will be the sole responsibility of Customer. Customer also acknowledges that certain information included in the Service will be provided by third parties. Instinct will have no responsibility for any aspect of such third party information. Customer will permit (and authorizes) Instinct to notify Customer's users of Customer's responsibilities and the acknowledgments set forth in this Section 5, including by presentation to each user, as a condition of the user's access to or use of the Service, of Instinct's end-user agreement in the form set forth on [Exhibit A](#) to this Agreement.

**5.2. Technology Matters.** Customer will obtain and maintain its own information systems, including backup and recovery infrastructure for Customer Data and its Confidential Information, equipment, connectivity and other technology. If required by Instinct for delivery of the Service or Instinct's performance under this Agreement, Customer will permit Instinct to remotely access or monitor Customer's systems that are utilized in connection with the Service. Customer will establish access requirements for its users and will be responsible for any and all use of, and activities, data, transactions or administration conducted through or that occur under, Customer's account or its user accounts, whether or not authorized by Customer or the user. Customer will not, and will ensure that its users will not, (i) license, sell, transfer, distribute or otherwise make available or disclose to any third party the Service or Instinct proprietary rights, or (ii) copy, modify, adapt, decompile, reverse engineer, attempt to duplicate or make derivative, competitive or its own works based upon the Service or Instinct proprietary rights, including any ideas, features, functions or graphics of the Service. Customer will operate its business and use, and will ensure that its users use, the Service in compliance with this Agreement, any policies or requirements issued by Instinct, and applicable laws (including United States and other country export control laws), including without violating any rights of any third party.

## **6. Customer Information**

**6.1. Commitment to Responsible Data Stewardship.** Instinct endorses the "Principles of Veterinary Data Ownership and Stewardship" established by the American Veterinary Medical Association and Veterinary Study Group, Inc. and will strive to implement such principles in its management of the Service and use of Customer Data. Among other things, Customer Data and Customer's Confidential Information will, as between Instinct and Customer, always be the sole property of Customer. As such, Customer will have responsibility for the accuracy, sufficiency, title, legal compliance and other aspects of Customer Data and Customer's Confidential Information. Instinct will have the right to use Customer Data in order for Instinct to provide the Service (including, subject to Instinct's privacy policy, by providing Customer Data to third party providers of services contracted by Instinct in connection with the Service) or, subject to Customer's written election to revoke such right, for any other purpose reasonably related to Instinct's business.

**6.2. Medical Records.** Each party will comply with applicable laws relating to veterinary medical or pharmacy records.

**6.3. Privacy Data.** Each party will comply with applicable laws relating to Privacy Data, subject to this Section 6. Customer acknowledges that Privacy Data will be collected by or on behalf of Customer (and not by Instinct) and transferred by Customer to Instinct, as a service provider to Customer under this Agreement. As between Customer and Instinct, Instinct's liability relating to Privacy Data will be limited to its compliance the provisions of this Section 6 and Customer will be liable for compliance with applicable laws relating to Privacy Data, including the collection and transfer of Privacy Data, unauthorized access to or disclosure or use of Privacy Data, and the compliance of the provisions of this Section 6 with applicable laws relating to Privacy Data. Nothing in this Agreement will limit Instinct's liability to any individual whose Privacy Data is processed by Instinct for noncompliance by Instinct with applicable laws relating to such individual's Privacy Data.

**6.4. Privacy Policies.** Customer will establish a privacy policy, and will obtain all required consents or authorizations, for the collection, transfer, disclosure or use of Privacy Data (including as contemplated by this Agreement) or other Customer Data (including to make patient records or pharmacy information available in



Instinct Shareville or through InstinctScripts), Customer's use or Instinct's operation of the Service, or the relationship between Customer and Instinct. Instinct will establish a privacy policy for the Service that will notify individuals regarding the manner in which Instinct will use Privacy Data. Instinct's standard privacy policy, as currently in effect, is available at [www.instinct.vet/legal](http://www.instinct.vet/legal).

**6.5. Data Security.** Instinct warrants that (i) Customer Data will be hosted on systems infrastructure that is consistent with commercial practices for comparable service providers of similar services under similar conditions, taking into account the costs of such infrastructure, the need for Privacy Data in connection with the Service, and the risk and impact of a security breach on individuals whose Privacy Data is hosted on such infrastructure, (ii) Customer Data will be managed by Instinct utilizing technical and organizational measures designed to protect against unauthorized access to, or disclosure or use of, Customer Data by Instinct employees and contractors and against reasonably anticipated third party threats to the security of Customer Data, and (iii) Instinct will promptly report to Customer any unauthorized access to (including any breach of systems security), or disclosure or use of, Customer Data, including a description of any mitigation and corrective action to be taken by Instinct. Except for breach by Instinct of this Section 6.5, Customer will be responsible for the security of Customer Data, including any breach of such security or any unauthorized disclosure, misappropriation or unauthorized use or access of Customer Data.

**6.6. Data Transition.** In the event of termination of this Agreement, Instinct will assist Customer with the transition of its Customer Data by making Customer Data available to Customer in a format reasonably determined by Customer and Instinct (and, for clarity, will provide no other deconversion or transition assistance), upon payment of fees, if any, to be mutually agreed upon. Instinct will have no obligation to retain any Customer Data for more than ninety (90) days after termination of this Agreement.

**6.7. Confidentiality.** Each party shall maintain in strict confidence, and use reasonable care to protect and safeguard (a) Confidential Information set forth in item (i) of the definition of Confidential Information and (b) Confidential Information of the other party and shall not, directly or indirectly, except as otherwise permitted in this Agreement, (i) reproduce, disclose, or make available to any third party any such Confidential Information, (ii) assist or enable any third party to access or use any such Confidential Information, or (iii) use or exploit any such Confidential Information to its or any other person's or entity's enrichment or advantage or to derive any economic gain or for any other purpose whatsoever. Without limiting the foregoing, Customer will not demonstrate, make available or otherwise describe the feature set of the Service to any person or entity that provides products or services that are similar to or in competition with those of Instinct. All materials (including electronic media) provided by a party, and copies thereof, in which Confidential Information of such party may be contained shall remain the property of the disclosing party. Upon written request of such party, the other party will promptly deliver to such party all such materials and destroy all materials prepared by the other party in which Confidential Information may be contained. Notwithstanding the delivery or destruction of such materials, the parties shall continue to be bound by their obligations under this Section 6.7.

**6.8. Conflicts of Interest.** While Instinct may provide its services to other customers that may be competitors of Customer, in addition to its confidentiality obligations under Section 6.7, Instinct will endeavor to avoid conflicts of interest in its provision of services among competing customers.

**7. Service Performance.** Instinct's liability, and Customer's sole and exclusive remedy, relating to downtime or functionality of the Service will be termination of this Agreement by Customer in accordance with Section 9.2.

## **8. Proprietary Rights**

**8.1. General.** The Service, System Data, Instinct's Confidential Information and other Instinct proprietary rights or assets, and related or intellectual property rights, are and will be the property of Instinct. Instinct will have exclusive ownership of all materials, technology, ideas, inventions or other work product or information that are conceived or developed by Instinct (including any feedback of Customer) in the course of



providing the Service. Customer assigns to Instinct, without further consideration, all right, title and interest of Customer in or to any of the foregoing.

**8.2. Infringement Warranty.** Instinct warrants that the Service (other than licensed products included therein), and the project services, if any, does not infringe any third party's United States patent, copyright or trade secret and that Instinct owns or has valid and enforceable licenses to use licensed products included in the Service. Upon written notice of a breach of such warranty, Instinct will have a period as may be reasonably necessary to cure such breach. In the event that cure is not commercially reasonable, Customer or Instinct may, as Customer's sole and exclusive remedy, terminate this Agreement upon written notice to the other, in which event Customer will be entitled to a refund of all fees paid for any period after the date of such termination and, with respect to project services, Instinct will be obligated to reimburse to Customer all fees for such project services paid prior to the date of termination.

## 9. Termination

**9.1. Pilot Period.** Either party may terminate this Agreement upon written notice to the other party during the for the first three (3) months of Term. In such event, Customer will be entitled to a refund of fifty percent (50%) of the one-time fees paid by Customer pursuant to the Services Order plus all fees paid by Customer, including any remaining deposit, for any period after the date of such termination.

**9.2. Customer Rights.** In addition to the termination rights set forth in this Agreement and to any other available rights or remedies, Customer may, in its sole discretion, elect to terminate this Agreement (i) upon not less than sixty (60) days prior written notice to Instinct or (ii) after written notice to Instinct describing in reasonable detail a material breach of this Agreement by Instinct and the expiration of a period of not less than thirty (30) days in which such breach shall remain uncured. If this Agreement is terminated by Customer as provided in item (ii) above or pursuant to Section 7, Customer will be entitled to a refund of any fees paid by Customer for any period after the date of such termination.

**9.3. Instinct Rights.** In addition to the termination rights set forth in this Agreement and to any other available rights or remedies, Instinct may, in its sole discretion, terminate this Agreement after written notice to Customer describing in reasonable detail a material breach of this Agreement by Customer, and the expiration of a period of not less than thirty (30) days in which such breach shall remain uncured, provided that any failure by Customer to make timely payment in full of any fees or other amounts due and owing under this Agreement shall be deemed material and there shall be no cure period for any such failure

**9.4. Mutual Rights.** Either party may, in its sole discretion, elect to terminate this Agreement upon the other party's failure to continue to function as a going concern or to operate in the ordinary course of business, or if such party commits an act of bankruptcy within the meaning of the federal bankruptcy laws, or if bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or other similar proceedings will be instituted by or against such party.

**9.5. Consequences of Termination.** Upon termination of this Agreement, Customer will cease use of the Service, notify all users that use of the Service has been discontinued, and surrender to Instinct all property or materials that have been provided to Customer by Instinct. Upon or after any such termination, or any material breach of this Agreement by Customer and the expiration of the cure period above, if any, Instinct may, in its sole discretion, elect to shut down the Service to Customer and its users, terminate or prevent Customer's and its users' access to the Service, or cease the provision of any other services. Upon termination of this Agreement, Customer will be obligated to pay to Instinct all fees and reimbursable expenses accrued or incurred through the date of termination in respect of project services. Except as expressly provided in this Agreement, Customer will not be entitled in any circumstances to a refund of any fees or deposits.



**9.6. Survival.** The obligations of the parties under this Agreement, which by their nature would continue beyond the termination or expiration of this Agreement, shall survive termination or expiration of this Agreement, including Sections 6.7, 11, 12 and 14.

**10. Insurance.** Instinct will maintain throughout the Term commercially reasonable commercial general liability insurance and cyber insurance and shall provide Customer with evidence of such insurance coverage upon request.

**11. Indemnification.** Instinct agrees to indemnify, defend and hold harmless Customer and its Representatives from and against Damages arising out of any breach of this Agreement by Instinct, in each case arising directly and exclusively from the gross negligence or willful misconduct of Instinct. Customer agrees to indemnify, defend and hold harmless Instinct and its Representatives from and against Damages arising out of (i) any breach of this Agreement by Customer, (ii) any matter for which Customer expressly has responsibility under this Agreement, or (iii) any act or omission of Customer's Representatives or users of the Service.

## **12. Limitations of Liability**

**12.1. NO CONSEQUENTIAL DAMAGES.** IN NO EVENT WILL EITHER PARTY BE LIABLE OR RESPONSIBLE TO THE OTHER FOR ANY TYPE OF INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY, RELIANCE, INDIRECT OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE FORESEEABILITY OF SUCH DAMAGES, WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

**12.2. LIABILITY MAXIMUM.** IN THE EVENT INSTINCT WILL BE LIABLE TO CUSTOMER NOTWITHSTANDING THE LIMITATIONS AND EXCLUSIVE REMEDIES HEREIN, INSTINCT'S LIABILITY (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, BY STATUTE OR OTHERWISE), WILL NOT EXCEED, IN THE AGGREGATE, THE AMOUNT OF THE FEES RECEIVED BY INSTINCT FOR THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RIGHT TO THE LIABILITY.

**12.3. Warranty Exclusions.** Except for the express warranties set forth in this Agreement, Instinct does not make, and hereby disclaims, to the full extent permitted by law, any and all express or implied (by operation of law or otherwise) or statutory warranties, including warranties of merchantability, fitness for a particular purpose, noninfringement and title and any warranties arising from a course of dealing, usage or trade practice. Instinct disclaims all warranties as to third party software, facilities, servers and other products, equipment or services, even if any may be used to provide the Service or process Customer Data. Customer hereby waives all Damages based on any of the foregoing.

**13. Marketing.** Instinct may publicly refer to Customer, orally and in writing, as a Customer of Instinct and may, subject to the confidentiality obligations in Section 6.7, reference "business case" information, including upon reasonable notice using Customer's practice for demonstration purposes, to potential customers, investors, regulators and in its marketing efforts. Customer will provide Instinct, and Instinct may use in accordance with the foregoing, written feedback on the Service from time to time. Upon reasonable request of Instinct, Customer will serve as a reference for Instinct and the Service.

## **14. Additional Provisions**

**14.1. Severability and Waiver.** In the event any provision of this Agreement is held by a tribunal of competent jurisdiction to be contrary to the law, the remaining provisions of this Agreement will remain in full force and effect. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.

**14.2. Assignment.** This Agreement will bind and inure to the benefit of each party's successors and permitted assigns. Neither party may assign this Agreement in whole or in part, directly or indirectly, without the



express prior written consent of the other party, and any attempted assignment without such consent will be void, provided that, either party may, without the consent of the other party, assign all of its rights and obligations under this Agreement to any person or entity that purchases all or substantially all of its assets or any successor entity to such party by way of merger or other business combination. In addition, if Customer acquires, or is the successor entity by way of merger or other business combination with, any facility or provider that is then, or was within six (6) months prior to such acquisition, merger or combination, a customer of Instinct, such customer's software services agreement with Instinct shall be assigned to and assumed by Customer, and Customer shall, and shall cause such facility or provider to, not terminate such agreement other than as provided in Section 9.2(ii) or Section 9.4 of this Agreement for so long as this Agreement shall remain in effect. It is the intent of the parties that such Instinct customers shall remain subject to the fees under their Services Orders and software services agreements with Instinct and not become part of the fees payable by Customer under this Agreement.

**14.3. Notice.** Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by email, confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party as listed on the signature page to this Agreement or at such other address as may hereafter be furnished in writing by either party to the other party. Such notice will be deemed to have been given as of the date it is delivered, mailed, emailed, faxed or sent, whichever is later.

**14.4. Relationship of Parties.** Instinct and Customer are independent contractors, and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Instinct and Customer. Neither Instinct nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.

**14.5. Entire Agreement.** This Agreement, including the Services Order and any Addendum to these Service Terms (which are incorporated into and made part of this Agreement), constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument. The term "written" means anything reduced to a tangible form by a party, including a printed or handwritten document, e-mail or other electronic format. The word "including" (and correlative words, such as "include" and "includes") shall not be construed as a term of limitation but shall mean including without limiting the generality of any description preceding such term. The terms "hereby," "hereof," "herein" and "hereunder" mean by, of, in and under this Agreement, respectively, and refer to this Agreement as a whole and not merely to the Section or provision in which such term is used. The term "or" will be construed to be inclusive and have the meaning of "and/or". All references herein to the masculine gender will also include the feminine and neuter, and vice versa, and all references to the singular form will also include the plural, and vice versa, as the context may require. No provision herein will be construed against a party merely because of the role of such party or its counsel in the drafting thereof.

**14.6. Amendment.** A Services Order may be changed only by a written document signed by authorized representatives of Instinct and Customer. This Agreement, however, may be changed by Instinct from time to time. Such changes will be effective upon notice to Customer, including by email, and posting of such changes on Instinct's website. Customer's continued use of the Service following such notice and posting of changes will constitute Customer's acceptance and agreement to be legally bound by any such changes.

**14.7. Binding Agreement.** Each of the parties to the Agreement represents and warrants that all necessary action has been taken to authorize such party's execution, delivery and performance of the Agreement and that the Agreement is the valid and binding obligation of such party, enforceable in accordance with its terms.



**14.8. Cumulative Rights and Remedies.** Except as otherwise expressly provided in the Agreement, the rights and remedies of the parties under the Agreement (including the right to terminate the Agreement and the right to indemnification and the limitations on liability) shall be cumulative with and in addition to, not exclusive or in replacement of, any other rights or remedies that may be available under any other agreement between the parties, at law or in equity.

**14.9. Governing Law.** The Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania, without regard to its principles of conflicts of laws. Each of the parties to the Agreement hereby submits to the exclusive, personal jurisdiction of either the Federal District Court for the Eastern District of Pennsylvania, the Court of Common Pleas of Philadelphia County, Pennsylvania or any municipal or local court located in such county for all claims, disputes or controversies involving the parties and relating to the Agreement; provided, however, nothing herein shall prevent a party hereto from asserting a claim for indemnification or any other claim hereunder against the other party hereto in connection with a third party action in the same jurisdiction where a third party action has been brought.



## Exhibit A Form of End User Agreement

Thank you for accepting these terms for your use of the Instinct Science software (the "Software").

You should be aware of, and by your use of the Software you agree to, and will be legally bound by, the following:

**1. The Software is a documentation tool only.** As such, the Software does not, and is not intended to, provide diagnosis, practice guidelines, advice, or protocols for delivering patient care or medicine. The Software includes Instinct's exclusive medication safety warning system, but the Software, including the medication safety warning system, does not provide or constitute medical advice or a substitute for medical knowledge or judgment, all of which are your sole responsibility.

**2. You are responsible for your professional services.** Even though you use the Software, you are responsible for all aspects of the medical, diagnostic, therapeutic, and related professional services you deliver. This is the case even if the Software produces errors or presents data that is not complete or correct. For example, references from the Software, including the medication safety warning system, that help you provide your professional services must be checked and confirmed by you.

**3. You are responsible for how you use patient information.** Even if it is produced or stored by the Software, you are responsible for how you use patient data, including for your patient care requirements, legal or regulatory requirements, or other use. Certain information included in the Software will be provided by parties other than Instinct, and Instinct has no responsibility for that information. For example, the Software incorporates Plumb's Veterinary Drugs lookup platform, but Instinct has no responsibility for information provided by Plumb's. Additionally, Instinct has no role in the inputting of any order or script to the Software or any aspect of the processing or fulfillment of any prescription, and accordingly Instinct has no responsibility for such matters.

**4. You accept our privacy policy.** Our privacy policy is intended to notify you regarding the manner in which Instinct will use information provided to the Software that identifies you as an individual, which may include your name, address, telephone number, date of birth or social security number. You accept Instinct's standard privacy policy, as currently in effect, which is available at [www.instinct.vet/legal](http://www.instinct.vet/legal). You also accept Instinct's standard general terms of use, as currently in effect, which is available at the same link.

**5. You consent to records of your patients being made available in the Software.** This includes patient information included in any referral that you make or prescription that you issue. Additionally, you authorize the practice, hospital or facility with which you are affiliated or to which you refer patients, and the pharmacies through which you prescribe patient medication, to make the patient records, as well as your personally identifying information, they create or possess available to Instinct and the Software. You also authorize Instinct to use your patient information to provide the Software and for other business purposes.

**6. As between Instinct and you, your patient records will always be your sole property or, as applicable, property of the practice, hospital or facility with which you are affiliated.** As such, you will have responsibility for the accuracy, sufficiency, title, legal compliance and other aspects of patient information.

**7. You will comply with applicable laws relating to veterinary or pharmacy medical records and applicable laws relating to the privacy of patient information or your personal data.** You acknowledge that personally identifying information (including your information and information of your patient owners) will be collected by you or, as applicable, the practice, hospital or facility with which you are affiliated (and not by Instinct) and transferred by you or such practice, hospital or facility to Instinct, as a service provider of the Software.



**8. You understand that the Software and data may be compromised.** While Instinct uses industry standard systems to support the Software, like any technology, the Software may fail to function, become inoperative or inaccessible, produce errors, or lose, compromise, corrupt or inaccurately report data. Instinct makes no warranties with respect to the Software or its performance or security.

**9. You understand that the Software may experience a security breach.** As above, while Instinct uses industry standard systems to secure the Software and your data, including patient records, like any technology, the Software may experience a security intrusion or data breach. So long as Instinct uses industry standard systems, you agree that Instinct will have no responsibility or liability for the security of your personal data, any patient records or personally identifying information in those records, or any other data provided by you to the Software, including any breach of such security or any unauthorized disclosure, misappropriation or unauthorized use or access of any such data. In addition, you may access and use the Software only through the username and password provided, and you are responsible for any use of, and activities that occur under, your accounts or password, whether or not you authorized them.

**10. You may use the Software only in compliance with applicable laws and proprietary rights.** You will use the Software in compliance with all applicable laws (including, among others, international laws relating to privacy), all third party rights (such as copyright and privacy rights), and any policies or requirements of which Instinct makes you aware. You may not make the Software available to any other person or copy, modify, adapt, decompile, reverse engineer, generate source code, attempt to duplicate or make derivative works based on the Software or otherwise use the Software for any purpose other than that for which it is intended. You will have no rights of ownership in the Software or Instinct's intellectual property rights. You assign to Instinct any rights you may have in any suggestions or ideas related to the Software. Instinct reserves the right to monitor our equipment, including equipment you use, and your use of the Software and to terminate your use of the Software in its reasonable discretion.

**11. You will have no legal rights against Instinct.** You agree that in no event will Instinct be liable or responsible to you for, and you waive any rights you may have to, any Damages (defined below) from Instinct, except for any arising out of Instinct's acts or omissions in violation of its privacy policy (and subject to the limitations set forth in the privacy policy). This includes Damages arising out of any failure of the Software to function in any manner, any service-affecting failure of the systems infrastructure, including any of third parties, that results in your inability to use or access all or part of the Software or information, or any loss, compromise or inaccuracy of information, data loss, corruption or inaccuracy, reporting error, security breach, or use of or reliance on the Software or any information therein. "Damages" means any and all losses, claims, obligations, liabilities, actions, suits, proceedings, demands, judgments, payments, costs and expenses (including court costs, amounts paid in settlement, judgments, and reasonable attorney fees and other expenses) and damages of any kind, nature or description whatsoever. "Instinct" means Instinct Science, LLC.