

# General Conditions for IDEXX Animana ASP

Date: January 2016

*IDEXX Animana ASP is an online solution for Patient Administration and practice management. This document defines the conditions which will apply to this service provided by IDEXX. These General Conditions apply to all services at all times. Therefore, please read the following General Conditions carefully.*

## Article 1 Definitions

- 1.1 IDEXX Animana: IDEXX Europe B.V., with offices in Hoofddorp, The Netherlands, registered with the Chamber of Commerce under number 34104927, as provider of the Service.
- 1.2 Client: the natural person or legal entity with whom IDEXX Animana has concluded the Agreement and/or the user of the Service.
- 1.3 Service: also referred to as IDEXX Animana ASP. IDEXX Animana provides and maintains an online Patient Administration solution for the Client via the Internet. The online Patient Administration solution consists of several modules. The number of modules is agreed by means of an offer.
- 1.4 Patient Administration: All the data entered by the Client or produced by IDEXX Animana.
- 1.5 Agreement: The agreement for the use of the Service by the Client.
- 1.6 Party: each party to the Agreement.
- 1.7 Website: [www.animana.com](http://www.animana.com)
- 1.8 General Conditions: these general conditions.

## Article 2 Applicability, formation and performance

- 2.1 All offers, orders, agreements and deliveries of the Service are governed by these General Conditions, unless explicitly agreed otherwise in writing.
- 2.2 The Client enters into this Agreement with IDEXX Animana by means of an offer or contract governed by these General Conditions and of which they form part. An offer has a validity period of 30 days.
- 2.3 IDEXX Animana is authorised to refuse the Client without stating reasons.
- 2.4 IDEXX Animana is authorised to engage third parties for the performance of its Agreement.

## Article 3 Prices

- 3.1 All prices are in the currency as stated in the Agreement and excluding VAT and other government levies.
- 3.2 All prices stated on the website, in brochures and newsletters are subject to typing and calculation errors. No liability is accepted for the consequences of typing and calculation errors.
- 3.3 IDEXX Animana reserves the right to adjust the rates in the interim. The changes will be announced in the electronic newsletter of IDEXX Animana not later than one (1) month before they come into effect. Until the changes come into force, Clients who do not agree to these changes are authorised to terminate the Agreement as per the date on which the changes come into effect.
- 3.4 Every year in the month of January, IDEXX Animana may increase the prices by a maximum of four (4) percent, without the Client having the option of terminating the Agreement except as provided in Article 12.

## Article 4 Access to the Service

- 4.1 IDEXX Animana will provide the Service to the Client during the term of the Agreement as provided in Article 12. To this end, IDEXX Animana will provide the Client with a user name and password to access and configure the Service.
- 4.2 The Client must keep the user names and passwords supplied by IDEXX Animana to the Client secret. IDEXX Animana is not responsible for the abuse of user names and passwords, and may assume that a Client who logs on to the Service is actually the Client. The Client must inform IDEXX Animana if the Client suspects that the user names and passwords have been obtained by

unauthorised parties. In such cases, IDEXX Animana has the right to take effective measures to protect the Service and Patient Administration.

## Article 5 Acceptable Use of the Service

- 5.1 The Client determines which information is stored and/or exchanged using the Service. IDEXX Animana has no knowledge of this information. Therefore, the Client is responsible for ensuring that such information is lawful and does not infringe the rights of third parties. The Client shall use the Service exclusively for authorized and legal purposes, consistent with all applicable laws and regulations, including without limitation, data protection laws. The Client agrees not to load into the Service any content or data which (a) is libelous, defamatory, obscene, pornographic, abusive, harassing or threatening; (b) contains viruses or other contaminating or destructive features; (c) violates the rights of others, such as data which infringes on any intellectual property rights or violates any right of privacy or publicity; or (d) otherwise violates any applicable law. IDEXX Animana accepts no liability whatsoever for the information stored and/or exchanged using the Service. The Client indemnifies IDEXX Animana against any claims of third parties based on the assertion that the information stored and/or exchanged by the Client by means of the Service is unlawful. IDEXX Animana reserves the right to delete, move or edit any data that it may determine, in its sole discretion, violates this Agreement or is otherwise inappropriate.
- 5.2 In the event of suspected fraud or abuse of the Service, IDEXX Animana is authorised to provide the personal data of the Client and the Patient Administration to the competent authorities.
- 5.3 The Client shall promptly inform IDEXX Animana electronically of any changes in name, e-mail addresses and other data important for the performance of the Service by IDEXX Animana. The data referred to above can be entered via the Service.
- 5.4 The Client shall refrain from any unauthorised use of the Service and will act and conduct itself in accordance with what can be expected by IDEXX Animana from a careful user of the Service.
- 5.5 The Client may not allow more users to access the Service than specified in the Agreement.
- 5.6 The Client may not use the Service to act as the provider of the Service itself.
- 5.7 If, in the opinion of IDEXX Animana, there is a threat against the operation of the computer systems or the network of IDEXX Animana or third parties and/or the services provided through a network, IDEXX Animana will be authorised to take any measures it deems reasonably necessary to avert or prevent this risk.
- 5.8 Without prejudice to its other rights under the law or the Agreement, IDEXX Animana reserves the right to suspend its obligations to the Client or to terminate the Agreement if the Client acts or is reasonably suspected of acting in breach of the articles of this Agreement, without IDEXX Animana being required to pay any compensation or refund of the fee for the Service.

## Article 6 Maintenance

- 6.1 IDEXX Animana reserves the right to temporarily decommission the Service or parts thereof for routine maintenance, adjustment or improvement of the Service and web servers of IDEXX Animana. IDEXX Animana will try to perform such decommissioning outside office hours as much as possible and to notify the Client of the planned decommissioning in advance. IDEXX Animana will never be required to pay any compensation to the Client because of such decommissioning. Nothing in this Section shall obligate IDEXX Animana to provide notice to the Client in the event of any outages for emergency purposes.
- 6.2 IDEXX Animana is authorised to adjust the software of the Service or parts thereof from time to time to improve the functionality and to correct errors. If an adjustment results in a significant change in functionality, IDEXX Animana will try to inform the Client thereof prior to such change. Since the Service is delivered to several Clients, it is not possible to not implement an

adjustment only for the Client. IDEXX Animana is not required to pay any compensation for any damage caused by the modification of the Service.

- 6.3 IDEXX Animana is authorised to no longer provide components of the Service with updates and/or maintain them.
- 6.4 The links of IDEXX Animana with other service providers should be regarded as an additional service. IDEXX Animana cannot be required by the Client to maintain the link or to continue to maintain it. In addition, the proper operation of such links cannot be guaranteed, and IDEXX Animana has no liability for any services accessed via such links.

#### Article 7 Availability of the Service and support.

- 7.1 The Service will generally be available for use by the Client 24 hours per day, 7 days per week, 365 days per year, 98% of the time (calculated monthly), excluding planned maintenance windows determined by IDEXX Animana, or due to the fact that IDEXX Animana has experienced a force majeure event as provided in Article 11.
- 7.2 If the Service is unavailable due to faults, maintenance or other causes, IDEXX Animana will endeavour to inform the Client about the nature and expected duration of the interruption.
- 7.3 As part of the agreement, IDEXX Animana will provide the Client with support for the use of the Service by telephone and online. IDEXX Animana will endeavour to answer questions adequately and within a reasonable period. However, IDEXX Animana cannot guarantee the accuracy and/or completeness of the answers. Support is limited to functional topics relating to the Service and does not include administrative or tax advice.

#### Article 8 Payment

- 8.1 The price of the Service provided by IDEXX Animana will be made known to the Client in the contract. The subscription rate is based on a small percentage of the invoiced products and activities included in the Service.
- 8.2 The Client agrees to electronic invoicing by IDEXX Animana.
- 8.3 Unless agreed otherwise in writing, payments must be made through direct debit. In the case of direct debit, the Client shall authorise IDEXX Animana to debit the amounts due by the Client from its account. The Client shall ensure that the balance in the relevant account is sufficient. IDEXX Animana is authorised to charge additional administration costs if another payment method other than direct debit is opted for.
- 8.4 In the event of late payment, the Client shall, in addition to the amount owed and the interest due on such amount, pay any and all judicial and extrajudicial collection costs, including lawyer's fees, bailiff's costs and the costs of debt collection agencies.
- 8.5 Payment shall be immediately due and payable if the Client is declared bankrupt, granted a moratorium or if all of its assets are seized, or if the Client dies or, furthermore, is liquidated or dissolved.
- 8.6 In the cases referred to above, IDEXX Animana is furthermore authorised to terminate or suspend the performance of the Agreement or any part thereof that has not yet been performed, without any notice of default or judicial intervention being required, and without prejudice to the right of IDEXX Animana to require compensation for any damage that may arise as a consequence.

#### Article 9 Intellectual property rights

- 9.1 All intellectual property rights to the provided software of the Service are exclusively vested in IDEXX Animana or its licensors. During the period of the Agreement, the Client only acquires a right of use with respect to the Service that is not exclusive and non-transferable, and powers that are explicitly granted under these General Conditions or otherwise (for example, the number of users permitted for the relevant subscription) and the Client shall not multiply or make any copies of the Service or other materials.
- 9.2 IDEXX Animana is authorised to take technical measures to protect the software of the Service. If IDEXX Animana has secured the software by means of technical protection, the Client may not remove or avoid this security.
- 9.3 Information stored or processed by the Client through the Service is and shall remain the property of the Client. IDEXX Animana shall not take note of the stored information and Patient files, unless the Client has given permission for this, or if this is required for the performance of the Agreement, including without limitation as required in order to calculate Client's monthly fee for the Service based on a percentage of the total amount invoiced by Client for products and services in IDEXX Animana ASP.

- 9.4 Information stored or processed by the Client through the Service shall not be made available to third parties except as provided in this Agreement, unless the Client has given permission for this, or if this is legally required.

#### Article 10 Liability

- 10.1 The liability of IDEXX Animana for direct damage suffered by the Client as a result of an attributable shortcoming in the fulfilment by IDEXX Animana of its obligations under the Agreement shall be limited to the fees owed by the Client under this Agreement for the prior year (excluding VAT). Under no circumstances, however, shall the total compensation for direct damage exceed 15,000 Euros (excluding VAT).
- 10.2 The total liability of IDEXX Animana for damage because of death or physical injury or for property damage shall under no circumstances exceed 50,000 Euros per event causing the damage, whereby a series of related event shall constitute one event.
- 10.3 Liability of IDEXX Animana for indirect damage, including consequential damage, lost profits, lost savings, distortion and loss due to business interruption, the incorrect conversion of scanned documents is excluded in all cases.
- 10.4 Besides the cases referred to in paragraph 1 of Article 10, IDEXX Animana has no liability whatsoever for any damage, regardless of the grounds on which an action for damages could be based. The exclusions and limitations referred to in paragraph 1 of Article 10 to paragraph 3 of Article 10 inclusive shall not apply if and insofar as the damage is the result of wilful misconduct or gross negligence on the part of the management of IDEXX Animana.
- 10.5 IDEXX Animana shall never be liable for damage caused by force majeure (see Article 11 for force majeure).
- 10.6 Any right to compensation can only arise if the Client reports the damage in writing to IDEXX Animana within 30 days after it has arisen.
- 10.7 The Client indemnifies IDEXX Animana against any and all claims of third parties (including patients and customers of the Client) in respect of compensation for damage, costs or interest in connection with this Agreement and/or the Service. Without limiting the foregoing, in the event that a customer of the Client lodges a complaint against IDEXX Animana or its licensors, or a dispute arises between a customer of the Client and the Client or IDEXX Animana or its licensors in connection with the management and control of such customer's personal information or in connection with sending communications to such customer, the Client will resolve such complaint or dispute and hold IDEXX Animana and its licensors harmless from any damage, liability or loss, except in cases where the Client reasonably establishes IDEXX Animana's liability for such complaint or dispute.

#### Article 11 Force majeure

- 11.1 In the event of force majeure, which shall at least be taken to include faults in the telecommunications infrastructure (internet), civil unrest, mobilisation, war, traffic jams, strikes, lockouts, business interruptions, stagnation in the supply, fire, flood, import and export restrictions and in the event that IDEXX Animana is not enabled by its own suppliers, for whatever reason, to deliver, as a consequence of which fulfilment of the Agreement cannot be reasonably required from IDEXX Animana, the performance of the Agreement will be suspended or the Agreement may be terminated, all this without any obligation to pay compensation.

#### Article 12 Duration and termination

- 12.1 The Agreement is entered into for the period specified in the offer, with a minimum period of twelve months. After that, the Agreement shall, if no notice has been given, be automatically extended for the same period.
- 12.2 Following the minimum twelve month period set forth above, the Agreement may be terminated by a Party in writing or by email at the end of a calendar month, with due observance of a notice period of one (1) month, without stating any reasons. The notice of termination by the Client is not final until it has been confirmed by email by IDEXX Animana. IDEXX Animana shall make the stored Patient Administration of the Client available to the Client in a common format within 10 working days after termination of the Agreement. IDEXX Animana may charge costs for providing the Patient Administration. Following the 5 working day period after termination of the Agreement, IDEXX Animana will destroy the stored Patient Administration of the Client. However, it is possible that the Patient Administration partially remains available on backups of IDEXX Animana. IDEXX Animana will give no guarantee in this regard.
- 12.3 The Client itself is responsible for storing the Patient Administration under the

legal retention obligation. If the Client wishes IDEXX Animana to retain its Patient Administration, it will have to request IDEXX Animana to do so.

- 12.4 If either Party defaults in the performance of any of its obligations under this Agreement and such default has not been remedied within thirty (30) days after written notice of such default, the non-defaulting Party may immediately terminate this Agreement in addition to its other rights and remedies under law, without the terminating Party being liable to pay compensation.
- 12.5 In the event of a dissolution or termination as referred to in the previous articles, the following obligations shall survive the termination of the Agreement:
  - o outstanding claims/payments;
  - o liability.

#### Article 13 Processing of personal data

- 13.1 If the Client enters personal data in the online Patient Administration, both the Client and IDEXX Animana fall under the Personal Data Protection Act [Wet bescherming persoonsgegevens (Wbp)], whereby, in the terminology of the act, the Client is the 'controller' and IDEXX Animana is the 'processor'.
- 13.2 Under the Personal Data Protection Act (article 14) the controller and the processor must conclude an agreement with regard to the processing of personal data carried out by the Client or Animana. In the absence of a further explicitly agreed 'processing agreement', the provisions of this article shall be construed as an agreement as referred to in the Personal Data Protection Act.
- 13.3 The storage and use of your Patient Administration is subject to the then-current IDEXX Privacy Policy Statement, available on [idexx.com](http://idexx.com) or [animana.com](http://animana.com). IDEXX Animana uses a third party hosting provider, currently Amazon Web Services (or such other provider of such services as notified to you in writing from time to time during the term), to host IDEXX Animana ASP and the Patient Administration contained therein. Such hosting services are provided solely at data centers located in the European Union. You consent to such third party hosting.
- 13.4 IDEXX Animana will ensure an appropriate level of security in view of the risks of the processing and the nature of the data to be protected. This, however, only if and insofar as this forms part of the Services or infrastructure of IDEXX Animana. IDEXX Animana uses industry-standard security technology to ensure the Client has complete access to records while keeping them safe from outsiders. Data is encrypted using industry-standard Secure Sockets Layer (SSL) encryption while it moves between the Client and IDEXX Animana systems, until it is processed by the secure virtual private cloud. Once secure inside the IDEXX Group network your data is protected by IDEXX Group maintained secure firewalls and industry-proven data security standards.
- 13.5 IDEXX Animana also warrants that any third party acting under the authority of IDEXX Animana, insofar as this person has access to personal data of which the Client is the controller, only processes it as authorized by this Agreement or on instructions of the Client.
- 13.6 The Client warrants that it will only enter personal data in the Services of IDEXX Animana in a fully lawful manner.
- 13.7 If the Client, in connection with a legal obligation, for example under the Personal Data Protection Act, is required to amend, remove or surrender data stored in the Services of IDEXX Animana, IDEXX Animana will assist as much as possible. The costs of the activities performed to this end may be invoiced separately.

#### Article 14 Confidentiality

- 14.1 The Parties undertake to observe secrecy with regard to all confidential information received from the other party. The Parties also impose this obligation on their employees as well as on third parties engaged by them for the performance of the Agreement.
- 14.2 Information will in any event be regarded as confidential if one of the Parties qualifies it as such.
- 14.3 IDEXX Animana is authorised to use the name and logo of the Client as a reference.

#### Article 15 Amendments to General Conditions

- 15.1 IDEXX Animana reserves the right to amend or supplement these General Conditions.

15.2 Amendments shall also apply to already concluded Agreements, subject to a notice period of 30 days after notification of said amendment by electronic message. Minor changes can be implemented at any time.

- 15.3 If the Client refuses to accept an amendment to these General Conditions, it may terminate the agreement until the date on which the new General Conditions come into effect, by this date or on the date of receipt of the notice if it is sent after the effective date of the amendment.

#### Article 16 Final provisions

16.1 The Agreement is governed by Dutch law.

16.2 The Client may not assign or transfer, by operation of law or otherwise, any of its rights under this Agreement to any third party without IDEXX Animana's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be null and void.

16.3 Insofar as not prescribed otherwise by mandatory law, any disputes which may arise from this Agreement shall be finally settled in accordance with the rules of arbitration of The Netherlands Arbitration Institute (*Nederlands Arbitrage Instituut*), as at present in force, by one arbitrator appointed in accordance with the said rules. The arbitration proceedings shall be conducted in English, and all documents delivered to or by the arbitrator shall be in English. The arbitrator shall decide in accordance with the rules of law. The place of arbitration shall be Amsterdam, The Netherlands.

16.4 The version of any communication received or stored by IDEXX Animana and measurements and monitoring conducted by IDEXX Animana are regarded as authentic, subject to proof of the contrary submitted by the Client.

16.5 Partial nullity: If a provision in the Agreement and/or the General Conditions is void, this shall not affect the other provisions of the Agreement/General Conditions. The Parties will determine (a) new provision(s) to replace it (them), which is as close to the intention of the original Agreement and the General Conditions as possible.

16.6 These General Conditions are drawn up in Dutch and other languages, including English. In the event of any difference in content or meaning, the Dutch text shall be binding. The Dutch text is available on <http://www.animana.nl/over-animana/algemene-voorwaarden-animana/>.