



IDEXX SmartService™ Agreement - EU
(Revision May 2018)

NOTICE TO USER: PLEASE READ THIS AGREEMENT CAREFULLY BEFORE INDICATING YOUR ACCEPTANCE AND USING IDEXX SMARTSERVICE™ INTELLIGENT DEVICE MANAGEMENT SERVICE. BY USING IDEXX SMARTSERVICE YOU, AND THE VETERINARY PRACTICE YOU REPRESENT, ACCEPT ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOU. IF YOU DO NOT AGREE, DO NOT USE IDEXX SMARTSERVICE.

This Agreement sets forth the terms of IDEXX SmartService intelligent device management service (the “Service”) for certain equipment (such as diagnostic instruments, laboratory information and practice management systems, radiography products, and related computers) provided by the IDEXX entity that invoices you, its affiliates or our authorized distributors (“IDEXX Equipment”). The words **we, us** and **our** refer to IDEXX, IDEXX’s affiliates and our authorized distributors.

1. Definitions: In addition to the defined terms set forth in other section of this Agreement, the following defined terms apply:

“Data Protection Agreement” means the agreement between IDEXX and you which regulates the arrangements between the parties relating to processing of Personal Data.

“Personal Data” means any data relating to an identified or identifiable living natural person.

2. Scope of Service: Upon your acceptance of this Agreement, device relationship management (“DRM”) software, which is already installed on your IDEXX Equipment, shall be activated to permit us to remotely access the IDEXX Equipment for the purpose of providing the Service. The Service will enable IDEXX to remotely monitor, troubleshoot, diagnose, and service your IDEXX Equipment and the devices connected to it from your practice site. The Service will also include remote upgrades of your IDEXX Equipment software and the software within connected devices. In order to provide the Service, we will remotely access and pull specific data that will help us diagnose and solve equipment performance issues, as well as patient (pet) name, age and breed, client (pet owner) name, and test information and analyses on a per test run basis. If you have an extended maintenance agreement for your IDEXX Equipment (such as IDEXXCare Plus), the Service as described herein is provided at no additional charge. In the event your extended maintenance agreement with us is terminated, we may, at our sole election, cease providing remote technical support, but continue to provide you with remote software upgrades or other portions of the Service using the DRM software without charging a fee. If we elect to continue to provide services through the DRM software, this Agreement (including our ability to use your data as described in this paragraph and in Section 6 below) will remain in place. If you wish to have the DRM software deactivated and our ability to remotely access the IDEXX Equipment terminated, you must notify us in writing by sending an email to smartservice@idexx.com.

3. Technical Environment: In order to use the Service, you must have a high-speed internet connection. You shall provide and incur the cost of the IDEXX Equipment and the high-speed internet connection as specified by us. You shall provide the appropriate network connectivity for the Service to operate properly. The DRM software used with the Service includes security features to permit only authorized personnel to access the IDEXX Equipment.

4. Limited Warranty: We warrant the Service as included in the Limited Warranty granted to you upon your purchase of your IDEXX Equipment. Please refer to the terms and conditions of sale provided at the time of your IDEXX Equipment purchase or available on our website www.idexx.com for the specifics of the Limited Warranty.

5. Limitation of Liability: We are not liable for failure to perform under this Agreement due to circumstances beyond our reasonable control. IN NO EVENT WILL WE OR OUR LICENSORS BE LIABLE TO YOU OR TO ANY OTHER PERSON OR ENTITY FOR ANY LOST PROFITS OR USE, LOSS OF GOODWILL OR ANY OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL, INDIRECT, EXEMPLARY, PUNITIVE OR MULTIPLE DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF GOODWILL, DATA OR EQUIPMENT OR FOR BUSINESS INTERRUPTION, ARISING OUT OF YOUR USE OF THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE, EVEN IF WE WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

OUR ENTIRE LIABILITY FOR THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT YOU PAID FOR THE SERVICE.

Some jurisdictions do not allow the exclusion or limitation of special, incidental, consequential, indirect, exemplary, punitive or multiple damages or the limitation of liability to the actual price paid for the product or service, so the above limitations may not apply to you. Our limited warranty gives you specific legal rights, and you may also have other rights that vary from jurisdiction to jurisdiction.

6. Use of Data and Data Protection: IDEXX considers proper processing of Personal Data to be highly important and has adopted the privacy policy which can be found at www.idexx.com. The arrangements between the parties relating the processing and protection of Personal Data are set forth in the Data Protection Agreement found at www.idexx.eu/gdpr. We do not share your Personal Data with third parties except in an aggregated anonymized format, and except as provided in our Privacy Policy and the Data Protection Agreement, or otherwise with your express consent. As described in the privacy policy and the Data Protection Agreement, IDEXX will use aggregated anonymized Personal Data provided through the Service to perform market analysis in order to anticipate our customers' needs, gain know-how which will benefit veterinary practices in general, and to provide professional services and medical education to the veterinary industry. You agree that such aggregated anonymized Personal Data and any non-Personal Data stored, exchanged or processed by IDEXX through the Service may be provided to third parties without your prior consent.

7. Governing Law; Venue: This Agreement and the transactions contemplated hereby, and all related disputes between the parties under or relating to this Agreement, whether in contract, tort or otherwise shall be governed by the laws of the Netherlands without reference to conflict of laws principles. If a dispute arises in connection with the Service or this Agreement, the parties agree to meet within sixty (60) days of notification to attempt in good faith to reach an amicable settlement. ABSENT AN AMICABLE SETTLEMENT, ANY DISPUTE ARISING IN CONNECTION WITH THIS AGREEMENT, OR ANY OTHER AGREEMENT RESULTING FROM THIS AGREEMENT, OR THE BREACH, TERMINATION OR INVALIDITY HEREOF OR THEREOF, SHALL BE FINALLY SETTLED BY A COMPETENT COURT IN AMSTERDAM, THE NETHERLANDS. Both parties waive any claims against each other for multiple, punitive or exemplary damages in any legal actions relating to this Agreement.

8. Severability: If any of the provisions of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable in any respect, then the validity and enforceability of the remaining provisions shall not be affected or impaired thereby, and you and we agree to replace such invalid or unenforceable provision with an enforceable and valid arrangement that, in its economic effect, is as close as possible to the invalid or unenforceable provision.

9. Miscellaneous: You agree not to transfer this Agreement or the IDEXX Equipment or Service (whether by stock purchase, merger, transfer of business, operation of law or otherwise) to any other person without our prior written permission, and that any such attempted transfer is void. This Agreement constitutes the entire agreement between us with respect to its subject matter and supersedes any prior oral or written agreement we may have had regarding its subject matter. This Agreement may be modified only by an amendment provided to you by IDEXX. When we make modifications, we will notify you in advance, and your further use of the Service will indicate your acceptance of the modifications. No delay or omission by either of us in requiring performance by the other, or in enforcing any of our rights, under this Agreement shall operate as a waiver of any of our rights or a bar to future enforcement of such rights.

10. Governing Language: Any translation of this Agreement is made for local requirements only. In the event of a dispute between the English and any non-English versions, the original English version of this Agreement shall control all questions of interpretation with respect thereto. Any other documents delivered or given pursuant to this Agreement, including notices, may be in English.