

Scheduling, Messaging and Connect Terms & Conditions

VERSION: 700.4.1 The following service agreement is between you (the "Customer") and Henry Schein Animal Health (the "Service Provider") regarding the Rapport™ Service.

NOTE TO SUBSCRIBER:

CAREFULLY READ THE FOLLOWING LEGAL AGREEMENT.

1. USE of this Rapport™ Service (the "Service") allows Customer to send email, voice, and/or text messages for the purpose of client communication, service reminders, and/or appointment reminders. Service Provider makes the Service available to the Customer during the period the Customer maintains a paid subscription to the Service. The Customer must be a current licensed user of Service Provider's software, for Services where software is required for provision access.

2. These terms constitute the entire and only agreement (collectively, the "Agreement") between Service Provider and the Customer (including Customer's designated users) with respect to the Service and supersede all other communications and agreements with regard to the subject matter hereof. Upon notice published over the Service, Service Provider may modify this Agreement, the Operating Rules or prices, and may discontinue or revise any or all other aspects of the Service at its sole discretion and without advance notice. Unless otherwise agreed, the Customer's right to use the Service or to designate users is not transferable and is subject to any limits established by Service Provider.

3. For situations where credit card payment is utilized, the Customer shall maintain a current authorization for Service Provider to debit the Customer's credit card account for such amounts. In addition, the Customer shall provide Service Provider with a current street address and Internet e-mail address for future communications and shall notify Service Provider of any change of the address. The Customer shall pay all applicable taxes related to use of the Service by the Customer or the Customer's designated users. For situations where the Customer's credit card issuing financial institution has been notified of a payment dispute, the Customer agrees that proof of Service usage by the Customer constitutes the Customer's authorization to submit payment request to Credit

Card issuing financial institution. Service Provider may, in addition, at its sole discretion and without notice to the Customer, (a) suspend its performance under this Agreement and deny the Customer and (or) the Customer's designated users' access to and use of the Service until the Customer is back in good standing, or (b) terminate this Agreement and the Customer and (or) the Customer's designated users' access to and the use of the Service. Further, Service Provider may cancel the Service to the Customer without cause upon thirty days (30) prior written notice. The Customer must provide Service Provider with written notice of the Customer's intent to terminate use of the Service. At the time of cancellation, the Customer access to any of the Customer's data submitted and (or) utilized by the Service may be permanently terminated. In the event the Customer terminates the Agreement, Service Provider will not provide a refund for any unused portion of the Services paid in advance by the Customer. In the event that Service Provider terminates the agreement, Service Provider will provide a refund for any unused portion of the services paid in advance by the Customer.

4. No bailment or similar obligation is created between the Customer (and/or the Customer's designated users) and Service Provider with respect to service provided to the Customer. The Customer is solely responsible for maintaining the confidentiality of passwords, including restricting the use of the password by the Customer's designated users. The Customer shall be responsible for all use of the Service accessed through the Customer's password. SERVICE PROVIDER SHALL NOT HAVE ANY RESPONSIBILITY OR OBLIGATION TO THE CUSTOMER, OR THE CUSTOMER'S DESIGNATED USERS, OR OTHER USERS OF THE SERVICE TO MONITOR, SUPERVISE OR OVERSEE THE CONTENTS OF FILES SUBMITTED AND (OR) UTILIZED ON THE SERVICE.

5. The Customer agrees to indemnify Service Provider and Henry Schein, Inc. against liability for use of the Customer's data which liability is a direct result of the Customer's misuse or negligence in its business practices.

6. Service Provider may make copies of all files submitted and (or) utilized in connection with some of the Services. Service Provider is not obligated to archive such copies

and will utilize them only for backup purposes. They will not be accessible to the Customer.

7. The Customer is responsible for and must provide all connection and other equipment and services necessary to use the Service. The Customer should maintain a primary electronic file of all materials. The Customer will be responsible for working with Service Provider to insure the installation of the "VetLogic" application and that Service Provider is able to receive the clinical data. The Customer must maintain all appropriate hardware, software and connection requirements for the Service to operate. Failure to deliver any service for reasons of hardware, software or connection requirements will not be the responsibility of Service Provider.

8. THE CUSTOMER EXPRESSLY AGREES THAT USE OF THE SERVICE IS AT THE CUSTOMER'S SOLE RISK. NEITHER SERVICE PROVIDER NOR ANY OF ITS LICENSORS, EMPLOYEES, OR AGENTS WARRANTS THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE; NOR SERVICE PROVIDER OR ANY OF ITS LICENSORS, EMPLOYEES OR AGENTS MAKES ANY WARRANTY AS TO THE RESULTS TO BE OBTAINED FROM USE OF THE SERVICE. THE SERVICE IS MADE AVAILABLE ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES WHICH ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION, OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS AGREEMENT. NEITHER SERVICE PROVIDER NOR ANYONE ELSE INVOLVED IN CREATING, DELIVERING OR MAINTAINING THE SERVICE SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF USE OF THE SERVICE OR INABILITY TO USE THE SERVICE OR OUT OF ANY BREACH OF ANY WARRANTY. IN NO EVENT WILL SERVICE PROVIDER'S LIABILITY FOR ANY CLAIM, WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS PAID BY SUBSCRIBER, IF ANY, FOR THE SERVICE FOR THE TWELVE-MONTH PERIOD PRECEDING THE EVENT FORMING THE BASIS OF THE CLAIM.

9. The provisions of paragraphs 3, 5, 6, and 8 are for the benefit of the Customer and

its respective Suppliers, Licensors, Employees, and Agents; and each shall have the right to assert and enforce such provisions directly on its own behalf.

10. This agreement is, and shall be governed by and construed in accordance with, the law of the State of New York applicable to agreements made and performed in New York. Customer agrees that it is Customer's desire that this agreement, along with all agreements and all other documents relating thereto, be written in the English language only.

11. Notwithstanding any acknowledgment of the Customer purchase order by SERVICE PROVIDER, any provision or condition in any purchase order, voucher, letter or other memorandum of the Customer which is in any way inconsistent with, or adds to, the provisions of this agreement is null and void. Neither the course of conduct between parties nor trade practice shall act to modify the provisions of this Agreement. If any provision of this Agreement is determined to be invalid, all other provisions shall remain in full force and effect. The provisions of paragraph 9 and 12 and all obligations of and restrictions on the Customer and its designated users shall survive any termination of this Agreement.

12. Service is normally available to you the Customer when it is within the operating range of our system but may be available outside of that area by other prearranged conditions or agreements. The ability to complete the Service is subject to transmission limitation, reduction in transmission speed, or interruption caused by weather, your equipment, terrain, obstructions such as trees or buildings, or other conditions. Service may be limited in some areas where high speed connectivity is not available or may be temporarily limited or interrupted due to

system capacity limitations, system repairs or modifications, or in response to suspected fraud, abuse, misuse of the network, hacking or malicious viruses. Interruption may also result from nonpayment of charges by you. We may cease service of SERVICE PROVIDER if, in our sole discretion, we are experiencing excessive billing, collection, fraud problems or other misuse of our system.

13. Account Access and Unauthorized Use. Any person able to provide information we deem sufficient to identify you and the Account is authorized by you to receive information about and make changes to your Account, including adding new Service.

14. Information collected by SERVICE PROVIDER or submitted as part of this agreement is used solely for responding to the Customer's request for products, services or information. Information may be exchanged among SERVICE PROVIDER, its subsidiaries and service providers as needed to fulfill customers' requests. SERVICE PROVIDER does not sell e-mail addresses, telephone or facsimile numbers or other personally identifiable information to other companies. SERVICE PROVIDER may aggregate statistics that are gathered regarding customers and provide this information to third parties on a non-personally identifiable (deidentified and aggregated) basis. SERVICE PROVIDER will not sell or provide to a third party any clinic or client specific data, including financially identifiable information, which would allow individual clinics or natural persons to be identified. We may disclose information to fulfill certain legal and regulatory requirements if we believe, in good faith, that such disclosure is legally required or necessary to protect others' rights or to prevent harm, or in accordance with the customer's instructions. You are, at all times during the term of this Agreement and thereafter, solely responsible

for obtaining and maintaining or verifying that you or your organization has obtained and is maintaining all consents and all other legally necessary consents or permissions required or advisable to use the Services, including without limitation those consents necessary to disclose, process, retrieve, transmit, and view personally identifiable information you transmit and store in connection with the Services. You agree that SERVICE PROVIDER, our licensors, and all other persons or entities involved in the operation of Services provided through the site, have the right to collect, monitor, retrieve, store, retain, dispose of and use personally identifiable information in connection with the operation of such services, and are acting on your behalf in transmitting personally identifiable information. You understand and acknowledge that the Service and the personally identifiable information will be stored and processed in the United States by a third party service provider.

15. Use of Service. Reproduction, retransmission, dissemination or resale of Service is prohibited without prior written contractual arrangements and/or approvals from SERVICE PROVIDER. You are responsible for your connection compatibility with our Service and that your connection meets federal standards. You are responsible for the purchase and maintenance of any additional hardware, software and/or Internet access from your PC required to use the Service. Except as provided otherwise by law, you have no property rights to any Identifier, including, without limitation, any IP address, any email address or any other identifier, provisioned by us, or our agents, and you agree we may change any such Identifier at any time with or without prior notice to you. In the event we are required by law to transfer any Identifier to you on termination of this Agreement, we may charge you a fee.

Web Terms & Conditions

THIS RAPPORT™ SUBSCRIPTION SERVICE AGREEMENT (THIS "AGREEMENT") SETS FORTH THE TERMS ON WHICH MCALLISTER SOFTWARE SYSTEMS, INC. AND ITS LICENSORS AS APPLICABLE ("SERVICE PROVIDER") AGREES TO PROVIDE CUSTOMER WITH THE SUBSCRIPTION SERVICE, AS DESCRIBED BELOW. PLEASE READ THIS AGREEMENT CAREFULLY. BY PLACING AN ORDER FOR OR RECEIVING THE SUBSCRIPTION SERVICE FROM SERVICE PROVIDER, CUSTOMER AGREES TO BE LEGALLY BOUND BY THE PROVISIONS OF THIS AGREEMENT.

1 Definitions. As used in this Agreement, the following capitalized terms shall have the following meanings: "Customer" means the veterinary practice or other customer that purchases the Subscription Service from SERVICE PROVIDER. Where the Subscription Service is purchased for use by an organization, "Customer" refers to the organization jointly and severally with the individual placing the order for the Subscription Service on the organization's behalf.

"Rapport™ Website" means any pre-designed, customizable Rapport™ Website template licensed by SERVICE PROVIDER to Customer on a non-exclusive basis as part of a Subscription Service. "Subscription Service" means any of the Rapport™ web packages that are available by SERVICE PROVIDER that combine the Rapport™ Website, the Website Content Manager Services, and/or the Web Hosting Service, together with any and all customization, set-up, support, and other professional services

provided by SERVICE PROVIDER in connection therewith.

“Web Hosting Service” means the web hosting services provided by SERVICE PROVIDER for a Rapport™ Website and/or Customer’s independently created website.

“Website Content Manager Service” means the Rapport™ proprietary suite of online tools that allow Customer to access certain administrative features, add/modify certain content, include/exclude web site sections, upload images, and make other changes to its website.

2 Subscription Service. Subject to the provisions of this Agreement, SERVICE PROVIDER shall provide Customer with the Subscription Service ordered by Customer and agreed to by SERVICE PROVIDER. Customer may use a licensed Rapport™ Website or Customer’s existing web site (as specified in the order) with the Subscription Service package purchased by Customer, in accordance with the provisions of this Agreement and all applicable Rapport™ service policies. Access to and use of administrative portions of the Subscription Service (including the Website Content Manager Service) is strictly limited to Customer staff. Customer may provide access to the user-directed, non-administrative functionality of the Subscription Service, as incorporated into Customer’s licensed Rapport™ Website or Customer’s existing website, solely to Customer’s designated staff, pet owner clients, and/or prospective pet owner clients.

3 Set-Up and Ongoing Support. SERVICE PROVIDER shall provide the initial set-up and ongoing support services identified in the initial order for the Subscription Service, or otherwise purchased by Customer and agreed to by SERVICE PROVIDER from time to time. Customer shall work with SERVICE PROVIDER and provide assistance (including but not limited to providing remote access and information regarding Customer’s computer system and practice management software) to allow SERVICE PROVIDER to provide the Subscription Service. SERVICE PROVIDER

4 Customer Responsibilities. Customer is solely responsible for the following: (i) assigning qualified personnel to manage its responsibilities and coordinate with SERVICE PROVIDER regarding the Subscription Service; (ii) providing all information, documentation, cooperation and assistance reasonably requested by SERVICE PROVIDER; (iii) establishing and maintaining, at its own

expense, all network connectivity and other software and equipment necessary to meet the technical requirements for using the Subscription Service; (iv) selecting, changing, and maintaining the privacy of the usernames and passwords for Customer and its designated users, and all activity that occurs under Customer’s and its designated users’ accounts; and (v) backing up and verifying all Customer data (SERVICE PROVIDER may back-up data as well, but assumes no obligation to archive such copies, or to make them available to Customer); and (vi) adopting reasonable measures to ensure the safety, security, accuracy and integrity of its facilities, systems, networks and data. SERVICE PROVIDER shall have no responsibility or liability arising out of or resulting in whole or in part from Customer’s failure or delay to provide any resources or perform any responsibilities, or for acts or omissions of third parties, telecommunications failures, force majeure, or other events beyond SERVICE PROVIDER’s reasonable control.

5 Prohibited Activities. Customer and its designated users may not use the Subscription Service: (a) to engage in any activity or transmit or display any content that is illegal, fraudulent, materially misleading, offensive harassing, defamatory, libelous, unsafe, invasive of another’s privacy, endangers minors in any way, or otherwise is objectionable all as determined by SERVICE PROVIDER, in its sole discretion; (b) to infringe, misappropriate, or violate the copyrights, trademarks, or other intellectual property or proprietary rights, rights of privacy or publicity, or other rights of any third party, or violate any contractual, fiduciary or other duty or obligation; (c) to transmit “junk mail,” “chain letters,” “pyramid schemes,” “spam,” or other unsolicited mass mailings or communications; (d) to promote discrimination based on race, ethnicity, religion, gender, sexual orientation, age or marital status, or hatred or physical harm of any kind against any group or individual; (e) to transmit or facilitate the transmission of viruses, adware, spyware, Trojan horses, intentionally corrupted data, or other malicious code; or (f) to attempt to gain unauthorized access to computer systems or engage in any activity that disrupts, diminishes the quality of, interferes with the performance of, or impairs the functionality of the Subscription Service;

6 Fees and Charges. Customer shall pay in advance all fees and charges incurred by Customer and/or Customer’s designated users for the Subscription Service, at the rates in effect for the billing period in which those charges are incurred. All pricing specified in an

order is subject to change in accordance with SERVICE PROVIDER’s standard pricing policies. Unless otherwise specified, all amounts are stated and payable in U.S. Dollars. The fees are exclusive of travel, lodging and other expenses for on-site services. The fees are exclusive of any taxes, duties and surcharges, however designated or levied, imposed by any governmental authority in connection with the Subscription Service or the use thereof by Customer or its designated users (collectively, “Taxes”). Customer shall be solely responsible for all such Taxes, and shall reimburse SERVICE PROVIDER for any such Taxes imposed on or paid by SERVICE PROVIDER (excluding Taxes based on the net income of SERVICE PROVIDER). Customer shall indemnify, defend and hold SERVICE PROVIDER harmless from and against Customer’s failure to timely report or pay any such Taxes. Where Customer is exempt from payment of any Tax, Customer shall provide SERVICE PROVIDER with a proper certificate or other proof of exemption.

7 Payment. Customer authorizes SERVICE PROVIDER to collect payment by initiating a transfer of funds using the credit card, checking, or other account information provided by Customer for payment. Customer shall maintain a current authorization for SERVICE PROVIDER to debit Customer’s credit card of bank account for such amounts. Customer represents that the account information, physical address, email address, and other information provided by Customer is true and accurate in all respects, and agrees to promptly update such information if it is or becomes incorrect or outdated. Customer agrees to pay all amounts due and owing to SERVICE PROVIDER, including bank penalties or charge-backs due to insufficient funds, by such authorized electronic funds transfer, or if such transfer fails, within fifteen (15) days after the date of SERVICE PROVIDER’s invoice. In the event Customer’s issuing financial institution is notified of a payment dispute, Customer agrees that proof of Subscription Service usage by the Customer constitutes Customer’s authorization for SERVICE PROVIDER to submit its payment request to the issuing financial institution. SERVICE PROVIDER reserves the right to charge interest on any overdue amounts at the rate of one and one half percent (1.5%) per month or the highest rate permitted by applicable law, whichever is lower, accruing from the due date until the date paid. In addition, in the event any amount owed by Customer under this Agreement requires collection efforts, Customer agrees to reimburse SERVICE PROVIDER for all costs of collection, including attorneys’ fees.

8 Term; Termination. This Agreement shall commence on Customer's placement and SERVICE PROVIDER's acceptance of the order for the Subscription Service, and shall continue in full force and effect for so long as SERVICE PROVIDER provides the Subscription Service, unless and until terminated as set forth herein. SERVICE PROVIDER may cancel the Subscription Service for convenience at any time, upon at least thirty (30) days' prior notice to Customer, subject to a prorated refund of any advance fees paid in respect of the canceled portion of the Subscription Service. Customer may cancel the Subscription Service for convenience at any time upon at least thirty (30) days' prior written notice to SERVICE PROVIDER; provided, however, Customer shall remain liable for payment of all advance fees and charges incurred, without any right of refund for the canceled portion of the Subscription Service. In addition, SERVICE PROVIDER may terminate and/or suspend the Subscription Service immediately, without any right of refund, and with or without notice to Customer: (i) to preserve the safety or security of SERVICE PROVIDER's facilities, systems, network, or data; (ii) in the event of non-payment by Customer; or (iii) in the event of Customer's or any of its designated users' misuse of the Subscription Service or other material breach of this Agreement.

9 Effects of Termination. On cancellation or termination of the Subscription Service for any reason: (i) Customer and its designated users shall cease all access to and use of (and SERVICE PROVIDER may disable access to) the Subscription Service, including but not limited to the licensed Rapport™ Website; (ii) Customer shall pay all fees and charges due and owing to SERVICE PROVIDER; and (iii) Customer's data stored by the Subscription Service may be erased or permanently deleted. Sections 1, 4, 5, 6 and 8 through 14 of this Agreement, and any other provisions which by their nature are intended to survive, shall survive the expiration or termination of this Agreement for any reason, and shall be binding on and inure to the benefit of the parties and their respective successors and permitted assigns.

10 Proprietary Rights. SERVICE PROVIDER shall retain exclusive right, title and interest in and to the Subscription Service, including but not limited to the licensed Rapport™ Website, the Website Content Manager Service, the Web Hosting Service, all graphic designs, style templates, icons, HTML code, programming, content, and other information and materials incorporated therein, and all copyrights, patents, trade

secrets, and other intellectual property and proprietary rights embodied therein, even if Customer requests, pays for, or provides any blueprints, designs, drawings, specifications, or other suggestions or feedback in connection therewith; provided, however, Customer shall retain ownership of its pre-existing Website, logo and similar materials provided by Customer for display on Customer's website. During the term of the applicable order only, SERVICE PROVIDER grants Customer a non-exclusive, non-transferable, limited license to access and use the Subscription Service solely for its intended purpose, and in accordance with the provisions of this Agreement. Customer shall not sublicense, reverse engineer, prepare any derivative works of, or otherwise attempt to derive the source code or operating logic for the Subscription Service, or any portion thereof. All rights and licenses not expressly granted to Customer under this Agreement are reserved by SERVICE PROVIDER and its suppliers. To the extent any trade names, trademarks, or other proprietary marks of third parties are incorporated into any component of the

Subscription Service, Customer agrees that such third party marks are the intellectual property of such third parties.

11 Customer Records. Customer shall retain ownership of, and shall be solely responsible for, Customer's electronic records and data regarding Customer's clients and their pets ("Customer Records"). Customer hereby authorizes SERVICE PROVIDER to access and use such Customer Records as necessary for purposes of providing the Subscription Service, as well as for internal purposes including but not limited to marketing, promotional, customer support, administration and user feedback purposes. SERVICE PROVIDER shall not sell, rent or transfer to third parties any Customer Records containing personally identifiable information. However, SERVICE PROVIDER may: (i) share Customer Records with SERVICE PROVIDER affiliates and service providers for purposes of providing the Subscription Service; (ii) disclose Customer Records in accordance with Customer's instructions, to fulfill legal or regulatory requirements, and/or if SERVICE PROVIDER believes, in good faith, that such disclosure is required or necessary to protect others' rights or to prevent harm; and (iii) collect, use and disclose to third parties statistics and other information included in the Customer Records on an aggregate or non-personally identifiable basis. You are, at all times during the term of this Agreement and thereafter, solely responsible for obtaining and maintaining or

verifying that you or your organization has obtained and is maintaining all consents and all other legally necessary consents or permissions required or advisable to use the Subscription Services, including without limitation those consents necessary to disclose, process, retrieve, transmit, and view personally identifiable information you transmit and store in connection with the Subscription Services. You agree that SERVICE PROVIDER, our licensors, and all other persons or entities involved in the operation of the Subscription Services provided through the site, have the right to collect, monitor, retrieve, store, retain, dispose of and use personally identifiable information in connection with the operation of such services, and are acting on your behalf in transmitting personally identifiable information. You understand and acknowledge that the Subscription Service and the personally identifiable information will be stored and processed in the United States by a third party service provider.

12 Customer Responsible for Website. Customer is solely responsible, and represents and warrants that it have full right, power and authority, and all necessary third party licenses and authorizations, for:

(i) all activities taking place on or through Customer's licensed Rapport™ Website and/or its independently developed website, including without limitation all products and services advertised, marketed and/or offered for sale thereon; (ii) all veterinary medical information and advice provided to pet owner clients or visitors to Customer's website; Customer further acknowledges that SERVICE PROVIDER is not a veterinarian and does not provide medical advice; (iii) ensuring that any and all domain names, email addresses, logos, and/or other marks used in connection with Customer's website, as well as all content, graphics, programming, blueprints, designs, drawings, specifications, and other information and materials provided by Customer for use in connection therewith, do not violate the copyrights, patents, trademarks, or other intellectual property rights, rights of privacy or publicity, or other rights of any third party; (iv) complying with all applicable laws pertaining to Customer's website, including without limitation all applicable privacy, information security, and unsolicited communications laws and regulations; and (v) ensuring that Customer's designated users (including pet owners) comply with the limitations and restrictions on use of the Subscription Service set forth in this Agreement. Customer agrees to indemnify, defend and hold SERVICE PROVIDER, its shareholders, directors, officers, employees, agents, affiliates, and suppliers

harmless from and against any and all claims, demands, suits, damages, losses, liabilities, costs and expenses (including without limitation attorneys' fees, court costs and costs of investigation) arising out of or resulting in whole or in part from Customer's or any of Customer's designated users' use or misuse of the Subscription Service, and/or Customer's or any of Customer's designated users' negligence, misconduct, breach of this Agreement, or violation of any applicable laws or regulations.

§ **DISCLAIMER.** CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE SUBSCRIPTION SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND ALL ACCESS TO AND USE OF THE SUBSCRIPTION SERVICE IS AT CUSTOMER'S AND ITS DESIGNATED USERS' SOLE RISK. WITHOUT LIMITING THE FOREGOING, SERVICE PROVIDER AND ITS SUPPLIERS HEREBY DISCLAIM ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE AND QUIET ENJOYMENT (OTHER THAN THOSE WARRANTIES WHICH ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION, OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS AGREEMENT). SERVICE PROVIDER DOES NOT WARRANT THAT THE SUBSCRIPTION SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, ACHIEVE ANY PARTICULAR RESULTS, OR MEET CUSTOMER'S PARTICULAR BUSINESS OR TECHNICAL REQUIREMENTS. NO BAILMENT OR SIMILAR OBLIGATION IS CREATED BETWEEN CUSTOMER (AND/OR CUSTOMER'S DESIGNATED USERS) AND SERVICE PROVIDER WITH RESPECT TO THE SUBSCRIPTION SERVICE. ANY TIMELINES OR COMPLETION DATES FOR SERVICES PROVIDED BY SERVICE PROVIDER ARE ESTIMATES ONLY, EVEN IF NOT EXPRESSLY STATED, AND ARE SUBJECT TO CHANGE. SERVICE PROVIDER SHALL NOT HAVE ANY RESPONSIBILITY OR OBLIGATION TO CUSTOMER, CUSTOMER'S DESIGNATED USERS, OR OTHER USERS OF THE SUBSCRIPTION SERVICE TO MONITOR, SUPERVISE OR OVERSEE THE CONTENTS OF FILES STORED ON THE SUBSCRIPTION SERVICE.

¶ **LIMITATIONS ON LIABILITY.** IN NO EVENT SHALL SERVICE PROVIDER OR ITS SUPPLIERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL, CONSEQUENTIAL OR SIMILAR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE SUBSCRIPTION SERVICE, OR THE RECEIPT OR USE THEREOF, INCLUDING LOST BUSINESS OR PROFITS, LOSS OF DATA,

BUSINESS INTERRUPTION, OR DOWNTIME. THE TOTAL CUMULATIVE LIABILITY OF SERVICE PROVIDER AND ITS SUPPLIERS ARISING OUT OF AND RELATED TO THIS AGREEMENT, THE SUBSCRIPTION SERVICE, AND THE RECEIPT AND USE THEREOF SHALL NOT, REGARDLESS OF THE NUMBER OF INCIDENTS OR CAUSES GIVING RISE TO ANY SUCH LIABILITY, EXCEED THE TOTAL FEES PAID BY CUSTOMER TO SERVICE PROVIDER FOR THE SUBSCRIPTION SERVICE IN THE SIX (6) MONTHS PRIOR TO THE ACCRUAL OF THE FIRST SUCH CLAIM. THE LIMITATIONS ON LIABILITY IN THIS SECTION SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF THE CAUSE OF ACTION OR BASIS OF LIABILITY (WHETHER IN CONTRACT, TORT, INDEMNITY, OR OTHERWISE), AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS ON LIABILITY ARE AN ESSENTIAL PART OF THIS AGREEMENT, AND SHALL BE VALID AND BINDING EVEN IF ANY REMEDY IS DEEMED TO FAIL OF ITS ESSENTIAL PURPOSE.

§ **Miscellaneous.**

(a) **Governing Law.** This Agreement shall be governed and interpreted for all purposes by the laws of the State of New York, U.S.A., without reference to any conflict of laws principles that would require the application of the laws of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (as enacted in any jurisdiction) do not and shall not apply to this Agreement, and are hereby specifically excluded.

(b) **Jurisdiction; Venue.** Any dispute, action or proceeding arising out of or related to this Agreement may be commenced in courts of Suffolk County, New York. Each party irrevocably submits to the personal jurisdiction and venue of such courts and waives any objections thereto, including any objection based on forum non conveniens. Customer further agrees that these courts shall have exclusive jurisdiction and venue over any lawsuit initiated by Customer against SERVICE PROVIDER

(c) **Notices.** All notices under this Agreement shall be in writing. Notices to Customer may be posted by SERVICE PROVIDER on the Subscription Service, or delivered by electronic mail or postage prepaid mail to the most current address on file. Notices to SERVICE PROVIDER shall be delivered by postage prepaid mail to SERVICE PROVIDER's then-current company headquarters address, to the attention of the President.

(d) **Language.** Customer agrees that it is Customer's desire that this agreement, along with all agreements and all other documents relating thereto, be written in the English language only.

(e) **Assignments.** Customer may not assign or otherwise transfer this Agreement, or any of its rights or obligations hereunder, without the prior written consent of SERVICE PROVIDER. Any attempted assignment or transfer in violation of the foregoing shall be null and void from the beginning and without effect. SERVICE PROVIDER may freely assign and delegate its obligations under this Agreement, including to its affiliates, service providers, and/or to any successor in interest in connection with its merger, acquisition, corporate reorganization, or sale or transfer of all or substantially all of its business or assets to which this Agreement relates.

(f) **Relationship; Third Party Beneficiaries.** The parties hereto are independent contractors. Nothing in this Agreement shall be deemed to create any agency, employment, partnership, fiduciary or joint venture relationship between the parties. Under no circumstances shall any pet owner or any designated user of or visitor to Customer's website be deemed a third party beneficiary of this Agreement.

(g) **Equitable Relief.** Customer recognizes that any actual or threatened breach of the licensing, usage, confidentiality, proprietary rights or other restrictions under this Agreement would cause irreparable harm to SERVICE PROVIDER, the extent of which would be difficult and impracticable to assess, and that money damages would not be an adequate remedy for such breach. Accordingly, in addition to all other remedies available under the circumstances, SERVICE PROVIDER shall be entitled to seek immediate equitable and other provisional relief in any court of competent jurisdiction.

(h) **Amendment; Waiver.** From time to time, SERVICE PROVIDER may post or otherwise make available amendments to this Agreement. Customer's continued use of the Subscription Service shall constitute its acceptance of such amended terms. Any other amendments to this Agreement must be in a written instrument executed by a duly authorized representative of SERVICE PROVIDER. No rights shall be waived by any act, omission or knowledge of a party, except by an instrument in writing expressly waiving such rights and signed by a duly authorized representative of the waiving party. Any waiver on one occasion shall not constitute a waiver on subsequent occasions.

(i) **Severability; Construction.** If any provision of this Agreement is determined to

be unenforceable under applicable law, such provision shall be amended by a court of competent jurisdiction to accomplish the objectives of such provision to the greatest extent possible under applicable law, or severed from this Agreement if such amendment is not possible, and the remaining provisions of this Agreement shall continue in full force and effect. The headings in this Agreement are for reference purposes only, and shall not affect the meaning or

interpretation of this Agreement. The term "including" as used herein means "including without limitation." The terms "herein", "hereunder", "hereto," "hereof," and similar variations refer to this Agreement as a whole, rather than to any particular Section.

(j) Entire Agreement. This Agreement sets forth the entire agreement of the parties and supersedes all prior agreements and understandings, whether written or oral, with regard to the subject matter hereof.

Notwithstanding any acknowledgment by SERVICE PROVIDER, any provision or condition in any purchase order, voucher, letter or other memorandum of Customer which is in anyway inconsistent with, or adds to, the provisions of this Agreement, is expressly objected to and rejected by SERVICE PROVIDER, and null and void. Neither the course of conduct between parties nor trade practice shall act to modify the provisions of this Agreement.

Postal and Pet ID Terms & Conditions

The following Terms and Conditions of Sale ("Terms and Conditions") shall apply to all sales made by Henry Schein Animal Health ("Supplier") to a buyer or end-user of Supplier's goods, whether on its own behalf or on behalf of any third parties ("Purchaser"), and every agreement or other undertaking by Supplier is expressly conditioned on the Purchaser's assent to these Terms and Conditions.

Disclaimer and Indemnification

Purchaser acknowledges that its purchase of Supplier's Rapport Postal Cards or Pet ID Cards and related products and services ("Products") does not constitute a registration or certification for any purpose and that Supplier is not affiliated with any government or other certifying or registration agency or body. Terms of purchase include but are not limited to submission of accurate information and agreement to these Terms and Conditions. Purchaser is required to know and be in compliance with all laws regarding their pets and the use of the Products. Purchaser assumes all liability, including reasonable attorneys' fees, that may occur as a result of any use or misuse of the Products. Supplier is not responsible for any injury, damages liabilities, or losses caused by Purchaser's violation of any applicable laws or third party's rights, including intellectual property rights, any use or misuse of the Products or any mistake or misrepresentation of any information provided to Supplier (collectively, "Losses"), and Purchaser indemnifies and holds harmless Supplier for any Losses and any other

claims, damages or losses arising out of any breach by Purchaser of this Agreement.

Orders and Cancellation Fee

Supplier reserves the right to reject or cancel an order for any reason in its sole discretion. Supplier's sole liability for cancelling an order shall be the return of all amounts paid by Purchaser to Supplier with respect to such

order. Purchaser understands that all orders are custom orders and are therefore considered firm once Purchaser has placed an

order and submitted the information to Supplier used for the preparation and printing of the Products. Any cancellations of an order or changes to the information provided to Supplier shall be subject to a minimum \$50.00 cancellation charge plus all related production costs incurred by Supplier in making such changes.

Lost or Damaged Shipments

The freight company accepts liability when the shipment leaves the manufacturing facility. Supplier assumes no liability for shipments lost or damaged during transit.

Product Returns

Products are customized to Purchaser's specifications and therefore are not returnable and payments are not refundable. In the event Purchaser desires to cancel, modify or suspend an order, Supplier may accept such cancellation, modification or suspension in its sole discretion and such acceptance may be subject to payment by Purchaser of a fee which

may include Supplier's losses, costs and expenses with respect to such cancellation, modification or suspension.

Price/Delivery Terms

Payment in U.S. dollars is required. Products, prices, terms and conditions are subject to change upon notice to Purchaser. Unless otherwise stated in writing, price and delivery terms are F.O.B. site of shipment, as defined in Incoterms 2000, and such prices do not include sales, use or other taxes or any export package cost, transportation, freight handling charges, export/import license fee, customs duties and the like, all of which shall be paid by Purchaser, who shall indemnify Supplier against all claims and liabilities therefor. Unless otherwise specified in writing, delivery dates are estimates only, and Supplier shall not be liable

for any damages, consequential or otherwise, resulting from the failure to deliver the Products by a particular date.

Payment/Credit

Purchaser must provide Supplier with valid credit card as a condition of purchasing the Products and maintain a current authorization for Supplier to debit Purchaser's credit card account for any amounts due hereunder. For situations where Purchaser's credit card's issuing financial institution has been notified of a payment dispute, Purchaser agrees that proof of Purchaser's order of the purchased Products constitutes Purchaser's authorization for Supplier to submit a payment request to such financial institution and receive payment therefore. Supplier reserves the right to modify its fees and charges and to introduce new charges at any time.

In the event credit is extended and payment is not received within forty-five (45) days of the invoice date, interest on unpaid amounts shall accrue at the rate of the lesser of (i) one and one-half percent (1.5%) per month or (ii) the highest rate allowed by law. Purchaser shall be liable for Supplier's costs associated with the collection of any amounts past due, including but not limited to reasonable attorneys' fees and court costs. Supplier retains title/security interest in the Products until full payment.

Inspection/Acceptance/Return/Cancellation

In the absence of an appropriate written notice sent to Supplier within fourteen (14) days after Purchaser's receipt of the Products which notice contains the full particulars of any deficiency in the quality or quantity of the Products, Purchaser shall be conclusively deemed to have inspected and accepted the Products.

Limited Warranty

Supplier warrants for a period of thirty (30) days from the time of delivery that the

information printed on the Products shall be the information as provided to Supplier by Purchaser and that the Products shall not otherwise be defective ("Limited Warranty"). In the event of any breach of the Limited Warranty, Supplier's sole and exclusive responsibility and liability shall be to either replace the non-conforming or defective Products or refund Purchaser's purchase price for such Products.

The Limited Warranty does not apply if (1) the defect is the result of use or handling of the Products in a manner, circumstances or purposes other than those approved or instructed by Supplier; (2) the Products are not used for their intended purpose or in accordance with applicable laws, or there is evidence of misuse, tampering, mishandling, neglect, modification or repair without the approval of Supplier; or (3) if such defect is otherwise the result of Purchaser's actions or failure to act.

THE LIMITED WARRANTY PROVIDED ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE LIMITED WARRANTY IS IN LIEU OF ANY OTHER LIABILITY OR OBLIGATION OF SUPPLIER FOR LOSSES, EXPENSES, INCONVENIENCES OR DAMAGES (WHETHER SPECIAL, INDIRECT, SECONDARY, OR CONSEQUENTIAL) ARISING FROM OWNERSHIP OR USE OF THE PRODUCTS. REPAIR, REPLACEMENT, OR CREDIT (AT SUPPLIER'S OPTION) UPON RETURN OF THE PRODUCTS IS PURCHASER'S SOLE REMEDY FOR ANY SUCH LOSSES, EXPENSES, INCONVENIENCES OR DAMAGES. PURCHASER HEREBY WAIVES ANY RIGHTS THAT IT MIGHT OTHERWISE BE ENTITLED TO IN CONNECTION WITH THE MATTERS COVERED IN THIS PARAGRAPH.

UNDER NO CIRCUMSTANCES WHATSOEVER SHALL SUPPLIER AND PURCHASER BE LIABLE TO EACH OTHER FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE AND WHETHER BASED UPON LOST GOODWILL,

LOST RESALE PROFITS, LOSS OF USE OF MONEY, WORK STOPPAGE, IMPAIRMENT OF OTHER ASSETS, OR OTHERWISE, AND WHETHER ARISING OUT OF BREACH OF WARRANTY, BREACH OF CONTRACT, STRICT LIABILITY IN TORT, NEGLIGENCE, MISREPRESENTATION, OR OTHERWISE, EXCEPT ONLY IN THE CASE OF PERSONAL INJURY WHERE APPLICABLE LAW REQUIRES SUCH LIABILITY. SUPPLIER'S SOLE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE AMOUNTS PAID TO SUPPLIER BY PURCHASER HEREUNDER OVER THE PREVIOUS TWELVE (12) MONTHS.

General

The invalidity or unenforceability (in whole or in part) of any provision, term or condition hereof, will not affect in any way the validity and enforceability of the remainder of such provision, term or condition, or any other provision, term or condition.

These Terms and Conditions may not be modified, terminated or repudiated, in whole or in part, except in a writing executed by the authorized representatives of Supplier and Purchaser. Supplier may, at its sole option, treat any attempted modification, termination, or repudiation to which it does not assent in writing, as a breach of these Terms and Conditions.

Upon any breach by Purchaser, or failure by Purchaser to comply with any of these Terms and Conditions, or if Purchaser becomes unable to conduct its normal business operations (including inability to meet its obligations as they mature), or if Purchaser becomes the subject of any proceeding under any state or federal bankruptcy law or other law, or makes any assignment for the benefit of creditors, Supplier will have the right to immediately cancel or terminate any and all agreements with or obligations to Purchaser relating to sales of the Products, in whole or in such part, which may result in the non-shipment or cancellation of Purchaser's pending or future order(s) and/or termination of Purchaser's relationship with Supplier, and to recover from Purchaser damages for breach (excluding consequential damages) and any unpaid installments due shall become

immediately due and payable. All remedies in these Terms and Conditions will be cumulative, and not alternative or exclusive, and will be in addition to all other rights and remedies provided by applicable law. The exercise or failure to exercise any remedy by Supplier will not preclude the exercise of the same or other remedies under these Terms and Conditions.

Supplier will not be deemed to have waived any provision of these Terms and Conditions or any breach by Purchaser of any provision hereof, unless specifically set forth in writing and executed by an authorized representative of Supplier. No such waiver by Supplier will constitute a waiver of such provision or breach on any other occasion. Supplier shall not be responsible for any failure to fulfill its obligations hereunder due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, terrorist actions, acts of God, shortages of materials, transportation delays, fires, floods, labor disturbances, riots or wars.

These Terms and Conditions, and the transactions contemplated hereby, will be governed by, construed and interpreted in accordance with the substantive laws of the New York (excluding the Convention on Contracts for the International Sale of Goods) without regard to its conflict of laws rules. Any legal action with respect to any such transaction must be commenced within one (1) year and one day after the cause of action has accrued. Any and all disputes arising under or relating to these Terms and Conditions and the transactions contemplated hereby shall be determined by binding arbitration in New York, New York in accordance with the International Arbitration Rules of the American Arbitration Association, and be conducted in the English language.

These Terms and Conditions, together with any quotation, order acceptance, or invoice subject to these Terms and Conditions, constitute the entire agreement and understanding of Supplier and Purchaser. Supplier assumes no liability except as expressly provided in these Terms and Conditions.