

# VETS FIRST CHOICE TERMS OF SERVICE

**Effective Date: January 01 2015**

**PLEASE READ THESE TERMS OF SERVICE CAREFULLY BEFORE USING THIS WEB SITE, ANY OF OUR MOBILE APPLICATIONS AND/OR ANY PRODUCTS (COLLECTIVELY, THE "SITE"). THESE TERMS OF USE MAY HAVE CHANGED SINCE YOUR LAST VISIT TO THE SITE. USING THE SITE INDICATES THAT YOU ACCEPT THESE TERMS OF SERVICE. IF YOU DO NOT ACCEPT THESE TERMS OF SERVICE, YOU DO NOT HAVE PERMISSION TO USE THE SITE. IF YOU ARE ACCEPTING THESE TERMS OF SERVICE ON BEHALF OF YOUR EMPLOYER OR ANOTHER ENTITY, YOU REPRESENT AND WARRANT THAT: (I) YOU HAVE FULL LEGAL AUTHORITY TO BIND YOUR EMPLOYER, OR THE APPLICABLE ENTITY, TO THE THESE TERMS OF SERVICE; (II) YOU HAVE READ AND UNDERSTAND THESE TERMS OF SERVICE AND (III) YOU AGREE, ON BEHALF OF THE PARTY THAT YOU REPRESENT, TO THESE TERMS OF SERVICE.**

Direct Vet Marketing, Inc. (dba Vets First Choice) (hereinafter "Vets First Choice") provides veterinarians, veterinary clinics, animal health providers and other veterinary related entities with a variety of products, services and related tools and resources including:

- Home Delivery Services (the "Home Delivery Services")
- Prescription Management Services (the "Prescription Management Services")
- Hosting Services (the "Hosting Services")
- Marketing Services (the "Marketing Services")

These products and services, and any related products, services and offerings are referred to in these Terms of Service as the "Products." Your use of the Site is subject to these Terms of Service, along with all applicable guidelines, rules and/or operating policies that Vets First Choice may establish and post from time to time, including without limitation Vets First Choice's customer Privacy Policy (the "Privacy Policy"), which will be posted by Vets First Choice on the Site and is subject to change by Vets First Choice from time to time (collectively, these Terms of Service, the Privacy Policy and all guidelines, rules and operating policies are referred to as, the "Agreement"). By clicking the 'Login' button on the VFC Practice Admin Login Page, by logging in to your Vets First Choice account or by accessing the Site and/or the Products in any way, you are indicating your acceptance of these Terms and your agreement to be bound by these Terms.

## **1. Copyright and Trademark Information**

Copyright © 2015 Direct Vet Marketing, Inc. All Rights Reserved.

This Site, including any related or referenced site owned or operated by Vets First Choice which contains a link to these Terms (each such web site, is included within the definition of "Site"), and the information which it contains, is the property of Vets First Choice and its affiliates and licensors. The Site is protected by U.S. and international copyright, trademark and other laws, and you acknowledge that these rights are valid and enforceable. Except as set forth in these Terms, you may not copy, reproduce, modify, adapt, translate, republish, upload, post, transmit, distribute, sub-license, sell, reverse engineer, decompile or disassemble any part of the Site without our prior written permission. The Site may be used solely (a) to the extent permitted in these Terms or (b) as expressly authorized in writing by Vets First Choice or, if so indicated in writing by Vets First Choice, its affiliates or licensors. Use of a Site for any other purpose is strictly prohibited. You acknowledge that you do not acquire any ownership rights by using the Site.

The trademarks, logos, and service marks displayed on the Site (collectively the "Trademarks") are the registered and unregistered trademarks of Vets First Choice, our licensors and suppliers, and others. Nothing contained on the Site should be construed as granting, by implication, estoppel or otherwise, any license or right to use any Trademark without the express written permission of Vets First Choice, our licensors or suppliers, or the third party owner of any such Trademark and use of the Trademarks is expressly prohibited.

## **2. General**

**2.1 Use of Products.** The Products are provided subject to the Agreement, as the Agreement may amended by Vets First Choice from time to time.

**2.2 Changes and Updates to This Agreement.** Please read this Agreement carefully before using the Site and/or

any Products. This Agreement may have changed since your last visit to this Site. Vets First Choice reserves the right at any time to: (a) change the terms and conditions of this Agreement; (b) change the Site, including eliminating or discontinuing any Products and/or other feature of the Site; and/or (d) deny or terminate your use of and/or access to the Site. Except as may be otherwise disclosed on the Site or in correspondence to you, any changes Vets First Choice makes will be effective immediately upon our making such change(s) available on the Site or otherwise providing notice thereof. You agree that by using the Site after the change has been implementing, you are indicating your acceptance of the change(s). As such, you are advised to review this Agreement each time you use the Site.

**2.3 Client Content and Customer Information.** You will or may be required to provide to Vets First Choice certain information about your practice and your customers, including, without limitation: customer purchasing history, contact information (including email address), list of products to be offered, practice logos, and such creative elements as may be designated or reasonably requested by Vets First Choice (the "Client Content"). You shall provide all Client Content in a format designated by Vets First Choice. You shall provide, directly or indirectly, all necessary regarding your customers and prospects (collectively, "Clients" or "Client Customers") by providing access to your veterinary practice management system, and you expressly acknowledge and agree that Vets First Choice has been granted all rights necessary to access such information in order to provide the Products requested or ordered by you. You are solely responsible for use of any Client Content provided or otherwise made available to Vets First Choice under this Agreement. You hereby grant to Vets First Choice a non-exclusive, worldwide, royalty-free license to use all Client Content and all trademarks owned or licensed by you as necessary to provide the Products to you under this Agreement.

**2.4 Fees and Payment Terms.** The fees for the Products are set forth on the Practice Admin section of the Site (the "Fee Schedule"). The Fee Schedule is subject to change at any time in Vets First Choice's sole discretion.

**2.5 Practice Support and Pet Owner Services.** You may from time to time provide Vets First Choice's personnel and contractors with remote access to your computers and other information systems for the purpose of troubleshooting issues that arise in your use of the Products. You hereby waive any claim for damages from any problems that may arise from such access, including without limitation any disruption or damage caused by Vets First Choice, its personnel and/or contractors.

**2.6 Username and Password.** You are responsible for maintaining the security of your account, passwords, and files. Vets First Choice will accept the instructions of any individual who claims to be authorized to direct changes to your account so long as such person presents your username and password on-line, by email or by phone, or through a third party service, if any, through which you access the Products. Vets First Choice has no knowledge of your organizational structure, if you are registering for the Products as an entity, or your personal relationships, if you are a person. Vets First Choice shall not be responsible for the actions of any individuals who misuse or misappropriate your contact lists or other assets using your username and password.

### **3.Home Delivery Services**

**3.1 Home Delivery Services.** Vets First Choice is a veterinary pharmacy fulfillment service that delivers prescriptions, compounded medications, therapeutic diets, and other products to pet owners. In addition Vets First Choice provides a comprehensive array of services which improves animal health and treatment compliance while assisting Registered Practices in managing their pharmacy and client communication and maintaining a valid Veterinarian Client Patient Relationship ("VCPR").

**3.2 Practice Designation.** Upon your registration with Vets First Choice, you must choose your registration status by indicating whether you will use the Home Delivery Services as a "Partner Practice" or as a "Referral Clinic", as more fully defined below. All registered practices may change their choice of service offering at any time by re-completing the registration process and agreeing to the respective terms of service. The following terms further describe the requirements applicable to each type of registration status.

**3.2.1 Partner Practice.** In order to comply with applicable laws, rules and regulations applicable to the veterinary field, a veterinarian opting to earn revenue through use of the Home Delivery Service (hereinafter referred to as a "Partner Practice") must set up an Internet Merchant Account ("IMA") to facilitate a direct financial transaction and flow of funds between the veterinary practice and its client for each order received.

**3.2.2 Referral Clinic.** For a Referral Clinic, Vets First Choice facilitates the transaction directly between Vets First Choice and your client per your prescription referral. Vets First Choice protects the VCPR by confirming all prescription orders with the veterinarian. A Referral Clinic will not participate in the financial transaction or flow of funds.

**3.3 Registered Practice Obligations.** You represent, warrant and covenant that:

- a. You and each of your prescribing veterinarians are licensed veterinarians in the state in which you prescribe and sell medications, and all prescriptions submitted to Vets First Choice have been written and authorized by a licensed veterinarian;
- b. You have a valid VCPR with the animal for which the medicine is prescribed;
- c. All prescriptions written by you are for use on a single animal patient;
- d. You have informed your Client that the Client may have the prescription filled by any available pharmacy option chosen by the Client, including through Vets First Choice;
- e. Your Client has requested to have the prescribed medication dispensed by Vets First Choice;
- f. Upon Vets First Choice's request, you agree to provide written verification of the items listed in this Section 3.3; and
- g. You will regularly update your Client accounts to reflect any changes in active status of an account (e.g. in the event of death of a pet).

In addition, you agree to:

- a. Provide true, accurate, current and complete information on our registration form (the "Account Information");
- b. Maintain and promptly update the Account Information (including changes of address, changes in practice location, and/or your e-mail address) to keep it accurate, current and complete;
- c. Authorize Vets First Choice to contact you by telephone, fax, or e-mail in order to communicate with you regarding the Products;
- d. Authorize Vets First Choice to contact Clients by telephone, fax, or e-mail related to use of the Products;
- e. Acknowledge that prescription drugs will not be re-sold or distributed to other entities; and
- f. Actively comply with CAN-SPAM requirements, including opt-out of email and phone messages as requested by the client.

If you are a Partner Practice, you further agree:

- a. To open an IMA and comply with any applicable terms and conditions in connection with such account;
- b. Agree and pay applicable credit card transaction fees on orders processed using the IMA and any other fees associated with the IMA.; and
- c. You will not request prescriptions for food or production animals or for any other products intended for human consumption.

Nothing in this Agreement requires, or is intended to require that the Partner Practice purchase, or recommend the purchase of Vets First Choice products and services.

**3.4 Vets First Choice Responsibilities.** Vets First Choice acknowledges the following:

- a. It is a licensed pharmacy in the State of Nebraska, and other states as required to provide the Products and perform the services hereunder; and
- [b. It will not knowingly disclose your client lists to third parties except: (i) to third party service providers engaged to provide assistance in providing the Products to you; (ii) where required to do so by law or in response to a subpoena or similar demand; (iii) when deemed necessary to protect our company, the Site; and/or (iv) in connection with a merger or acquisition of our company.

## **4. Hosting Services**

**4.1 Availability.** Subject to these terms and conditions of this Agreement, Vets First Choice agrees to provide you, directly or through a third party provider, with Hosting Services. Except as otherwise provided in this Agreement, the Hosting Services shall be available twenty-four (24) hours a day, seven (7) days a week, except for (i) scheduled maintenance and required repairs, (ii) unscheduled maintenance deemed necessary by Vets First Choice, (iii) downtime resulting from causes beyond the reasonable control of Vets First Choice or not reasonably foreseeable by Vets First Choice and (iv) any other loss or interruption causing an unavailability of the Hosting Services, including, but not limited to, interruption or failure of telecommunication, digital transmission links, or electricity, or Internet slow-downs or failures. If the Hosted Site is available by means of a hypertext link from your web site, Vets First Choice is not responsible for any failure or lack of availability of the Hosting Services due to the lack of availability of your web site and/or the link from your web site.

**4.2 Domain Name Registration.** Vets First Choice shall be the sole owner/registrant of the domain names and any other domain that resolves to the Hosted Site. Any use of such domains by you shall terminate upon expiration or termination of this Agreement and, in all cases, shall inure to the benefit of Vets First Choice.

## **5. Proprietary Rights, Confidentiality, Usernames and Passwords**

**5.1 Your Proprietary Rights.** As between you and Vets First Choice, Client Content, including, without limitation, all copyrights, trademarks, trade secrets, and any other proprietary rights therein, shall remain your sole and exclusive property.

**5.2 Proprietary Rights of Vets First Choice.** All materials, including but not limited to any computer software (in object code and source code form), data or information developed or provided by Vets First Choice or its suppliers under this Agreement, and any know-how, methodologies, equipment, or processes used by Vets First Choice to provide the Products to you, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto, and all domain names and website URLs used to provide Products to you, and all customer information obtained through the hyperlink to Vets First Choice web sites on the Hosted Site or other site provided by Vets First Choice (collectively "Vets First Choice Materials") shall remain the sole and exclusive property of Vets First Choice or its suppliers. To the extent, if any, that ownership of the Vets First Choice Materials does not automatically vest in Vets First Choice by virtue of this Agreement or otherwise, you hereby transfer and assign to Vets First Choice all rights, title and interest which you may have in and to the Vets First Choice Materials. You acknowledge and agree that Vets First Choice is in the business of designing and hosting web sites and providing marketing and communication services, and that Vets First Choice shall have the right to provide to third parties products and services which are the same or similar to the Products, and to use or otherwise exploit any Vets First Choice Materials in providing such products and services.

**5.3 Confidentiality.** Each party agrees that during the course of this Agreement, information that is confidential or proprietary may be disclosed to the other party, including, but not limited to software, technical processes and formulas, source codes, product designs, sales, cost and other unpublished financial information, product and business plans, advertising revenues, usage rates, advertising relationships, projections, and marketing data (the "Confidential Information"). The Confidential Information shall not include information that the receiving party can demonstrate (a) is, as of the time of its disclosure, or thereafter becomes, part of the public domain through a source other than the receiving party, (b) was known to the receiving party as of the time of its disclosure, (c) is independently developed by the receiving party, (d) is subsequently learned from a third party not under a confidentiality obligation to the providing party, or (e) is independently developed by the receiving party. Except as provided for in this Agreement, each party shall not make any disclosure of the Confidential Information to anyone other than its employees who have a need to know in connection with this Agreement. Each party shall notify its employees of their confidentiality obligations with respect to the Confidential Information and shall require its employees to comply with these obligations. The confidentiality obligations of each party and its employees shall survive the expiration or termination of this Agreement.

## **6. Ideas and Postings**

**6.1 Ideas and Feedback.** Vets First Choice cannot accept or consider creative ideas, feedback, suggestions, or materials (collectively, "Ideas") other than those we specifically request. If, despite our request that you not send Ideas, you do send us Ideas, none of the Ideas will be subject to any obligation, whether of confidentiality, attribution or otherwise, on our part and we will not be liable for any use or disclosure of any Ideas. By submitting, sending, posting, displaying, performing and/or otherwise distributing Ideas to Vets First Choice, you hereby grant us and our designees a worldwide, nonexclusive, sublicensable (through multiple tiers), assignable, royalty-free, perpetual, irrevocable right to use, reproduce, distribute (through multiple tiers), create derivative works of, publicly perform,

publicly display, digitally perform, make, have made, sell, offer for sale and import such Ideas in any media now known or hereafter developed, for any purpose whatsoever, commercial or otherwise, without compensation and without an obligation to report to the provider of the Ideas, and waive all moral rights (including any rights to attribution) that you may have in such Ideas. You further agree that we and our designees shall exclusively own all documents, works and other materials that incorporate all or part of any Idea(s).

**6.2 Acknowledgements Regarding Ideas.** You acknowledge and agree that other persons, including Vets First Choice employees and contractors along with others who have or will make Ideas, may have submitted or may submit in the future Ideas that are similar to the Ideas submitted by you. You acknowledge and agree that you will not receive any compensation because of Vets First Choice's use of other similar Ideas. You agree that no confidential or fiduciary relationship is established between you and Vets First Choice as a result of your submission of the Idea. Vets First Choice has no obligation to use or distribute your Ideas. You also acknowledge and agree that, with respect to any portion of any of your Ideas that are not protectable, submission of the Ideas shall not be deemed to place Vets First Choice in any different position than members of the general public.

**6.3 Representations and Warranties Regarding Ideas.** You represent and warrant to Vets First Choice that (a) the Ideas do not and will not infringe any rights of any third party, and that the Ideas do not and will not libel, defame, or invade the rights (including, without limitation, the right of privacy or publicity) of any third party; (b) all obligations relating to the Ideas have been satisfied, including, without limitation those with and relating to artists and personnel, licenses, and laboratory and other contracts; (c) you have the right to enter into this Agreement and to grant the rights granted or agreed to be granted hereunder; and (d) you have made all necessary payments (and no additional payments are required to be made) to any and all guilds, unions, performing rights societies, bodies and/or groups representing the foregoing, and other persons who participated in the production of the Ideas.

## **7. Warranties, Warranty Disclaimer and Remedies**

**7.1 Customer Warranties.** You represent and warrant that: (a) you have the power and authority to enter into and perform its obligations under this Agreement; (b) the Client Content that you submit and otherwise make available to us does not and shall not contain any content, materials, advertising or services that are inaccurate or that infringe on or violate any applicable law, regulation or right of any third party, including, without limitation, export laws, or any proprietary, contract, moral, or privacy right or any other third party right, and that you own the Client Content or otherwise have the right to place the Client Content on the Site; (c) you will validate and accurately fill all prescriptions in compliance with applicable laws, rules and regulations; (d) you will maintain any credit card and other payment information held by you in compliance with applicable laws, rules and regulations and any requirements of any card associations; and (e) you have all necessary licenses, permits and approval to conduct its business as contemplated hereunder. Should you receive notice of a claim regarding the Products, you shall promptly provide Vets First Choice with written notice of such claim. Subject in each case to the terms and conditions set forth in this Agreement, you hereby represent, acknowledge and agree that the Products may only be used for lawful purposes.

**7.2 Warranty Disclaimers; Remedies.** Vets First Choice, either through Vets First Choice or otherwise, does not practice veterinary medicine. All information contained on the Site, including information relating to animal medical and health conditions, products and treatments, is for informational purposes only and is often presented in summary or aggregate form. All information is supplied with no warranty what so ever. You should not use the information contained on the Site for diagnosing a health problem or prescribing a medication. You should carefully read all information provided by the manufacturers of the products on or in the product packaging and labels before prescribing or using any product purchased on the sites. Nothing in this Agreement requires, or is intended to require, you to purchase, or recommend the purchase of, products and services from Vets First Choice or from a Site. You shall inform each of your clients that the client is free to have any prescriptions dispensed at the pharmacy of the client's choice.

USE OF THE PRODUCTS AND ANY RELIANCE BY YOU UPON THE PRODUCTS, INCLUDING ANY ACTION TAKEN BY YOU BECAUSE OF SUCH USE OR RELIANCE, IS AT YOUR SOLE RISK. VETS FIRST CHOICE DOES NOT WARRANT THAT THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE PRODUCTS. THE PRODUCTS ARE PROVIDED "AS IS" AND VETS FIRST CHOICE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. Your sole and exclusive remedy for any failure or nonperformance of the Products shall be for Vets First Choice to use commercially reasonable efforts to adjust or repair the Products.

TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW: (A) THE SITE (INCLUDING ALL CONTENT) AND THE SERVICES ARE PROVIDED ON A STRICTLY "AS IS" BASIS AND WITHOUT WARRANTIES

OF ANY KIND, EITHER EXPRESS OR IMPLIED; AND (B) VETS FIRST CHOICE AND ITS AFFILIATES, AGENTS, SERVICE PROVIDERS, EMPLOYEES, OFFICERS, DIRECTORS, CONSULTANTS, REPRESENTATIVES, LICENSORS, SUPPLIERS, ADVERTISERS, SPONSORS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "REPRESENTATIVES") DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF TITLE, NONINFRINGEMENT, ACCURACY, COMPLETENESS, MERCHANTABILITY, QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE, AND ANY WARRANTIES THAT THE CONTENT AND SITE IS CURRENT AND/OR UP-TO-DATE. VETS FIRST CHOICE AND THE REPRESENTATIVES DO NOT WARRANT THAT THE SITE NOR YOUR USE OF THE FOREGOING, WILL BE COMPLETE, ACCURATE, CURRENT, RELIABLE, UNINTERRUPTED, ERROR-FREE OR SECURE, NOR THAT DEFECTS WILL BE CORRECTED, NOR THAT THE SITE OR THE SERVER(S) ON WHICH THE SITE IS HOSTED ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. YOU ACKNOWLEDGE THAT YOU ARE RESPONSIBLE FOR OBTAINING AND MAINTAINING ALL TELEPHONE, COMPUTER HARDWARE AND OTHER EQUIPMENT NEEDED TO ACCESS AND USE THE SITE, AND ALL CHARGES RELATED THERETO. YOU ASSUME ALL RESPONSIBILITY AND RISK FOR YOUR USE OF THE SITE AND YOUR RELIANCE THEREON. NO OPINION, ADVICE OR STATEMENT OF VETS FIRST CHOICE OR ANY OF REPRESENTATIVES, WHETHER MADE ON OR IN CONNECTION WITH THE SITE SHALL CREATE ANY WARRANTY.

Some states do not allow the disclaimer of implied warranties of merchantability and fitness for a particular purpose, so the above disclaimers or exclusions may not apply to you. In the event that applicable law imposes implied warranties on the Site notwithstanding the foregoing, such implied warranties shall not have a duration greater than one year from the relevant purchase or access date; shall terminate automatically at the end of such period; and shall be disclaimed and excluded to the fullest extent permitted by law. You may also have other rights under applicable law which vary from state to state.

VETS FIRST CHOICE AND THE REPRESENTATIVES ARE UNDER NO OBLIGATION TO VERIFY THE IDENTITY OF USERS OF THE SITE. VETS FIRST CHOICE AND THE REPRESENTATIVES DO NOT CONTROL THE MATERIALS POSTED OR SUBMITTED TO THE SITE BY PERSONS OTHER THAN THEMSELVES AND DO NOT MONITOR, SCREEN, OR EDIT THOSE MATERIALS FOR COMPLIANCE WITH APPLICABLE LAWS OR THIS AGREEMENT. YOU MAY FIND SOME OF THE MATERIALS POSTED BY OTHER USERS TO BE OFFENSIVE, HARMFUL, INACCURATE OR DECEPTIVE. YOU SHOULD USE CAUTION AND COMMON SENSE WHEN USING THIS SITE.

THROUGH YOUR USE OF THE SITE, YOU MAY HAVE THE OPPORTUNITY TO ENGAGE IN COMMERCIAL TRANSACTIONS WITH THIRD PARTIES. ALL SUCH TRANSACTIONS ARE AT YOUR OWN RISK. VETS FIRST CHOICE AND ITS REPRESENTATIVES ARE NOT PARTIES TO ANY SUCH TRANSACTIONS AND DISCLAIM ANY AND ALL LIABILITY REGARDING ALL SUCH TRANSACTIONS.

#### **8. Indemnification.**

You shall indemnify, defend, and hold harmless Vets First Choice, and its Representatives and defend any action brought against same with respect to any claim, demand, cause of action, debt, liability, or damage, including reasonable attorneys' fees, to the extent that such action is based upon a claim that: (i) arises from any alleged breach of this Agreement; (ii) arises out of your negligence or willful misconduct; (iii) arises from Client Content or effects of the Client Content or any messages sent in connection with your use of the Products; (iv) arising from your use of the Products; (v) arises from or related to payments processed on your behalf by Vets First Choice; or (iv) any of your business operations, including, without limitation, verification and fulfillment of prescriptions.

#### **9. Limitation of Liability.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL Vets First Choice, THIRD PARTY PROVIDER (AS DEFINED IN SCHEDULE A), SOFTWARE PROVIDER (AS DEFINED IN SCHEDULE A) OR ANY OF ITS UNDERLYING SERVICE PROVIDERS, BUSINESS PARTNERS, INFORMATION PROVIDERS, ACCOUNT PROVIDERS, LICENSORS, OFFICERS, DIRECTORS, EMPLOYEES, DISTRIBUTORS OR AGENTS (COLLECTIVELY REFERRED TO FOR PURPOSES OF THIS SECTION AS "VETS FIRST CHOICE") BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY MONEY DAMAGES, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, COVER, RELIANCE OR CONSEQUENTIAL DAMAGES, EVEN IF Vets First Choice SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. IN THE EVENT THAT, NOTWITHSTANDING THE FOREGOING, VETS FIRST CHOICE IS FOUND LIABLE TO YOU FOR DAMAGES FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE), THE MAXIMUM AGGREGATE LIABILITY OF VETS FIRST CHOICE TO YOU ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT YOU PAID FOR THE

PRODUCTS IN THE THREE (3) MONTHS PRIOR TO THE ACCRUAL OF THE APPLICABLE CLAIM, LESS ANY DAMAGES PREVIOUSLY PAID BY VETS FIRST CHOICE TO YOU IN THAT THREE (3) MONTH PERIOD. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO YOU.

## **10. Termination and Renewal.**

**10.1 Term.** This Agreement shall remain in effect for one (1) year from your date of acceptance, unless earlier terminated as otherwise provided in this Agreement (the "Initial Term"). This Agreement shall automatically be renewed beyond the Initial Term for additional one (1) year terms (each, a "Renewal Term"), unless either party provides the other party with a written notice of termination at least thirty (30) days prior to the expiration of the Initial Term or the then-current Renewal Term.

**10.2 Termination.** Either party may terminate this Agreement if a bankruptcy proceeding is instituted against the other party which is acquiesced in and not dismissed within sixty (60) days, or results in an adjudication of bankruptcy, or the other party materially breaches any of its representations, warranties or obligations under this Agreement, and such breach is not cured within ten (10) days of receipt of notice specifying the breach. Vets First Choice shall have no liability to you or any third party because of any termination by Vets First Choice hereunder. All provisions of this Agreement relating to your warranties, confidentiality, non-disclosure, proprietary rights, limitation of liability, indemnification obligations and payment obligations shall survive the termination or expiration of this Agreement.

**10.3 Termination and Payment.** Upon any termination or expiration of this Agreement, you shall pay all unpaid and outstanding fees through the effective date of termination or expiration of this Agreement. There are no refunds for any fees paid.

## **11. Restricted Persons; Export of Products or Technical Data.**

You hereby warrant that you are not a Restricted Person. For purposes of this Agreement, you are a Restricted Person if you or any officer, director, or controlling shareholder of the entity on behalf of which you are using the Products is (1) a national of or an entity existing under the laws of Cuba, Iran, Sudan, Syria, or any other country with which U.S. persons are prohibited from engaging in transactions, as may be determined from time to time by the U.S. Treasury Department; (2) designated as a Specially Designated National or institution of primary money laundering concern by the U.S. Treasury Department; (3) listed on the Denied Persons List or Entity List by the U.S. Commerce Department; (4) engaged in nuclear, missile, chemical or biological weapons activities to which U.S. persons may not contribute without a U.S. Government license; or (5) owned, controlled, or acting on behalf of a Restricted Person. If you become a Restricted Person during the term of this Agreement, you shall notify Vets First Choice within twenty-four (24) hours, and Vets First Choice shall have the right to terminate any further obligations to you, effective immediately and with no further liability to you, but without prejudice to your outstanding obligations to Vets First Choice. You agree that you shall not utilize the Products to conduct or facilitate any transaction with any Restricted Person, except as may be expressly authorized in advance in writing by the U.S. Government. You may not remove or export from the United States or allow the export or re-export of the Products, or any direct product thereof, including technical data, in violation of any restrictions, laws, or regulations of the United States or any other applicable country.

## **12. Third-Party Sites and Social Media Services.**

12.1 The Site may contain links to non-Vets First Choice web sites and access to certain third-party services, which may include, without limitation, social bookmarking services. These links and services are provided to you as a convenience, and Vets First Choice is not responsible for the content of any linked web site or use of any third-service service. Any non-Vets First Choice web site or service accessed from this web site is independent from Vets First Choice, and Vets First Choice has no control over, and assumes no responsibility for, the content, privacy policy, terms of use and practices of such web site or service. Any such web site or service has terms of use and a privacy policy different than this Agreement and our Privacy Policy. In addition, a link to any non-Vets First Choice web site or access to a third-party service does not imply that Vets First Choice endorses or accepts any responsibility for the content or use of such web site or service. By using any such web site or service, you expressly relieve Vets First Choice from any liability arising from your use of such third-party web site and service and any related content.

12.2 You may have the ability to log in to the Site via certain Social Networking Services and/or to access certain Social Networking Services. By integrating these Social Networking Services into the Site, we make your online experiences richer and more personalized. To take advantage of this feature and capabilities, we may ask you to authenticate, register for or log into Social Networking Services. As part of such integration, the Social Networking Services will provide us with access to certain information that you have provided to such Social Networking Services, and we will use, store and disclose such information in accordance with our Privacy Policy. However,

please remember that the manner in which Social Networking Services use, store and disclose your information is governed solely by the policies of such third parties, and we shall not have any liability or responsibility for the privacy practices or other actions of any third party site or service that may be enabled within our Site.

### **13. Jurisdictional Issues.**

13.1 This Service is administered by Vets First Choice from its offices in Portland, Maine, U.S.A. and other locations within the United States. Vets First Choice makes no representation that the Site is appropriate or available for use outside the United States, and access to the Site from jurisdictions in which the contents of the Site are illegal is prohibited. You may not use, export or re-export the Site or any copy or adaptation thereof, in violation of any applicable laws or regulations, including without limitation U.S. export laws and regulations. If you choose to access this Site from outside the United States, you do so on your own initiative and are responsible for compliance with applicable local laws.

13.2 Under California Civil Code Section 1789.3, California Site users are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 400 R Street, Suite 1080, Sacramento, California 95814, or by telephone at (916) 445-1254 or (800) 952-5210.

### **14. Arbitration.**

At our or your election, all disputes, claims, or controversies arising out of or relating to this Agreement and/or the Site that are not resolved by mutual agreement may be resolved by binding arbitration to be conducted before J.A.M.S. or its successor. Vets First Choice shall advance the costs of such binding arbitration, but you agree that should we prevail in the arbitration, Vets First Choice is entitled to reimbursement of all costs. Unless otherwise agreed by the parties, arbitration will be held in Portland, ME before a single arbitrator mutually agreed upon by the parties, or if the parties cannot mutually agree, a single arbitrator appointed by J.A.M.S. and will be conducted in accordance with the rules and regulations promulgated by J.A.M.S. unless specifically modified in this Agreement. The arbitration must commence within forty-five (45) days of the date on which a written demand for arbitration is filed by either party. The arbitrator will have the power to order the production of documents by each party and any third-party witnesses. In addition, each party may take up to three (3) depositions as of right, and the arbitrator will not have the power to order the answering of interrogatories or the responses to requests for admission or the inspection of premises. In connection with any arbitration, each party must provide to the other, no later than ten (10) business days before the date of the arbitration, the identity of all persons that may testify at the arbitration, a copy of all documents that may be introduced at the arbitration or considered or used by a party's witness or expert, and a summary of the expert's opinions and the basis for said opinions. The arbitrator's decision and award shall be made and delivered within sixty (60) days of the conclusion of the arbitration and within six (6) months of the selection of the arbitrator. The arbitrator will not have the power to award damages in excess of the limitation on actual compensatory damages set forth in the Agreement and may not multiply actual damages or award punitive damages or any other damages that are specifically excluded under the Agreement, and each party hereby irrevocably waives any claim to such damages. The parties covenant and agree that they will participate in the arbitration in good faith. The arbitrator may, in his or her discretion, assess costs and expenses (including the reasonable legal fees and expenses of the prevailing party) against any party to a proceeding. Any party refusing to comply with an order of the arbitrators will be liable for costs and expenses, including attorneys' fees, incurred by the other party in enforcing the award. Notwithstanding the foregoing, in the case of temporary or preliminary injunctive relief, any party may proceed in court without prior arbitration for the purpose of avoiding immediate and irreparable harm. The provisions of this arbitration section will be enforceable in any court of competent jurisdiction.

### **15. Miscellaneous.**

This Agreement constitutes the entire agreement between you and Vets First Choice and governs your use of the Site, superseding any prior agreements between you and Vets First Choice with respect to the Site. This Agreement shall be governed by the laws of the State of Maine without regard to its conflict of law provisions. With respect to any disputes or claims not subject to arbitration, as set forth above, you and Vets First Choice agree to submit to the personal and exclusive jurisdiction of the state and federal courts located in Portland, Maine. EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION (INCLUDING BUT NOT LIMITED TO ANY CLAIMS, COUNTERCLAIMS, CROSS-CLAIMS, OR THIRD PARTY CLAIMS) ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. FURTHER, EACH PARTY HERETO CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF EITHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH PARTY WOULD NOT IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. EACH OF THE PARTIES ACKNOWLEDGES THAT THIS SECTION IS A MATERIAL INDUCEMENT FOR THE OTHER PARTY ENTERING INTO THIS Agreement. The failure of Vets First Choice to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or



provision. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of this Agreement remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Site or this Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred. A printed version of this agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. The section titles in this Agreement are for convenience only and have no legal or contractual effect. Notices to you may be made via either email or regular mail. The Site may also provide notices to you of changes to this Agreement or other matters by displaying notices or links to notices generally on the Site. You hereby acknowledge that you have carefully read all of the terms and conditions of Vets First Choice's Privacy Policy and agree to all such terms and conditions.

#### **16. Contacting Vets First Choice**

Should you have any questions, comments or complaints regarding this Agreement or the Site, please contact us via postal mail at:

Vets First Choice  
7 Custom House Street, Suite 5  
Portland, ME 04101

Or email us at:

[Legal@vetsfirstchoice.com](mailto:Legal@vetsfirstchoice.com)

Copyright ©2015 Direct Vet Marketing, Inc. All Rights Reserved.