

Acumenex Veterinary Solutions

2201 Brant St., Burlington, ON L7P 3N8

OVMA Web Store Service Agreement

ACUMENEX VETERINARY SOLUTIONS, INC. (hereinafter referred to as ACUMENEX)
agrees to provide access to the Ontario Veterinary Medical Association (OVMA) web store service as soon as practicable, and
_____ (hereinafter referred to as CUSTOMER)
agrees to utilize the web store service in accordance with the provisions contained herein.

ACUMENEX has an agreement with the OVMA to provide OVMA members with the Web Store Service.

A brief summary of the OVMA Web Store Service agreement is as follows:

1. ACUMENEX agrees to provide all training and support to CUSTOMER to set up the web store and to provide on-going support.
2. ACUMENEX will only make the web store available to practices owned in whole or in part by current OVMA members. Should CUSTOMER cease to be owned by an OVMA member, CUSTOMER agrees that the web store shall cease to be made available to CUSTOMER fifteen days after the date that the practice no longer meets this membership requirement.

TERM AND TERMINATION

The term of this agreement is indefinite unless terminated by the CUSTOMER. This agreement can be terminated by CUSTOMER by giving 30 days notice. There are no penalties for canceling this agreement.

PAYMENT

Initial Set-up Fee: CUSTOMER agrees to pay ACUMENEX an initial set-up and training fee of \$495 (plus applicable taxes), due upon signing of this agreement. This fee may be paid by cheque or credit card and includes the first six (6) months transaction fees.

Web Store Transaction Fees: CUSTOMER agrees to pay a monthly transaction fee, based on the previous months' retail sales (shipping and taxes are not included in this total) through the CUSTOMER web store as follows:

1. For monthly sales of up to \$3,000 the monthly fee will be \$49;
2. For monthly sales of \$3,001 to \$5,000 the monthly fee will be \$99;
3. For monthly sales greater than \$5,000, the monthly fee will be \$149.

This transaction fee will be payable to Acumenex on a monthly basis at the end of each month and will be automatically paid by CUSTOMER credit card. Acumenex will provide CUSTOMER with the capability to generate all reports required to reconcile these amounts. **Note that the first 6 months are included as part of the Initial set-up fee.**

WEB STORE MERCHANT ACCOUNT

CUSTOMER agrees to set up and maintain a merchant account specifically for web store financial transactions. This merchant account must be set up with Chase Paymentech Solutions for the Web Store to function.

«« Terms & conditions on the reverse side form part of this Agreement. ««

Accepted By: Acumenex Veterinary Solutions, Inc.

2201 Brant St., Suite 102
Burlington, ON L7P 3N8
1-877-320-0907

Accepted By: CUSTOMER

Clinic Name: _____
Clinic Address: _____
Clinic Phone Number: _____

Signature: _____

Name: _____

Title: _____

Date: _____

Signature: _____

Name: _____

Title: _____

Date: _____

1. SUBSCRIPTION FOR WEB STORE ACCESS

CUSTOMER hereby subscribes to receive the right to access the Web Store during the term set forth in this Agreement. In consideration of CUSTOMER's payment of the Fees set forth in this Agreement, Acumenex hereby agrees to provide the Web Store to the CUSTOMER during such term, subject to all of the terms and conditions of this Agreement.

2. PAYMENT TERMS:

All payments, including Fees, shall be made by CUSTOMER in full without (a) defense, counter-claim, recoupment, offset, or deduction of any kind or nature which CUSTOMER may have against Acumenex under this Agreement or otherwise and (b) deduction for any import duties, stamp, sales, use, consumption, value added, transfer, or other taxes or similar charges, all of which shall be the responsibility of, and be borne exclusively by, the CUSTOMER and, to the extent required by applicable law, collected by Acumenex from CUSTOMER.

3. EDUCATION AND TRAINING:

ACUMENEX agrees to provide the Customer all necessary instructions for the CUSTOMER'S personnel in the operation and management of the Web Store Solution. Such instruction sessions shall be held in accordance with the mutual agreement of the parties. All training will be performed over the internet.

4. BREACH OF AGREEMENT:

If either Acumenex or CUSTOMER materially breaches any of its obligations under this Agreement, the other party shall have a right to terminate this Agreement by giving notice to the defaulting party and the term of this Agreement shall terminate automatically 30 days after such notice is deemed given unless the defaulting party cures such breach, provided that if Acumenex is claimed to be in breach and the breach cannot reasonably be cured within 30 days, the term of this Agreement shall not be terminated and Acumenex shall have the opportunity to cure such breach by commencing to cure the same as soon as practicable and diligently completing the same. Upon termination of this Agreement, CUSTOMER shall promptly return to Acumenex all documentation and other materials that Acumenex provided to CUSTOMER in connection with the Web Store.

5. TERMINATION

ACUMENEX will only make the web store available to practices owned in whole or in part by current OVMA members. Should CUSTOMER cease to be owned by an OVMA member, CUSTOMER agrees that the web store shall cease to be made available to CUSTOMER fifteen days after the date that the practice no longer meets this membership requirement.

6. WARRANTIES.

6.1. Acumenex warrants to CUSTOMER that the Web Store does not infringe any third-party Canadian copyrights or patents. Acumenex' sole obligations for a breach of this warranty shall be to modify or replace components of the Acumenex Software at Acumenex' sole cost and expense with functionally equivalent software so as to eliminate the infringement and to indemnify the CUSTOMER from any third party claim. Acumenex shall have sole control over and bear the entire cost of the defense of any third party infringement claim and any negotiations for the settlement thereof.

6.2. Acumenex warrants to CUSTOMER that it has the right to use the Acumenex Software to provide the Web Store and that it will operate the Web Store substantially in accordance with the Web Store documentation provided with the Web Store.

6.3. CUSTOMER shall give Acumenex prompt written notice of any claims under the foregoing warranties.

6.4. None of the foregoing warranties shall apply to the extent that any alleged infringement or failure to function as required derives from a combination of the Web Store with any program, equipment, or device not supplied, endorsed, or authorized by Acumenex.

7. OWNERSHIP, PROPRIETARY DATA, AND CONFIDENTIALITY.

7.1. CUSTOMER acknowledges that the Acumenex Web Store Solution and related documentation and all copyrights, trade secrets, and other right, title, and interest therein are the sole property of Acumenex and, other than the non-exclusive right to access and use the Web Store provided by Acumenex as set forth in the Agreement, CUSTOMER shall gain no right, title, or interest in the Acumenex Web Store Solution and related documentation.

7.2. CUSTOMER acknowledges that the information contained in the Acumenex Web Store Solution and related documentation is Confidential Information and contains trade secrets and proprietary data belonging to Acumenex (or Acumenex' Licensor), and that the presence of copyright notices on or in the Acumenex Software and related documentation does not constitute publication or otherwise impair the confidential nature thereof. CUSTOMER neither shall take nor permit any action to be taken which negatively impacts on Acumenex ownership of the Acumenex Web Store Solution and related documentation. CUSTOMER shall implement all reasonable measures to safeguard the confidentiality of the Acumenex Web Store Solution. CUSTOMER acknowledges that use or disclosure of the Acumenex Web Store Solution and related documentation in violation of this Agreement may cause irreparable harm to Acumenex.

7.3. Each of Acumenex and CUSTOMER shall not disclose, provide, or otherwise make available to any third party in whole or in part, any Confidential Information of the other party except each party may provide Confidential Information (a) to independent contractors who have a need to know in order to perform services for such party, provided such independent contractor is subject to an appropriate confidentiality agreement or (b) pursuant to legal process on reasonable notice to the owner of the Confidential Information. Each of Acumenex and CUSTOMER shall take all reasonable action to fulfill its obligations with respect to the use, copying, confidentiality, and security of Confidential Information of the other party. Each of Acumenex and CUSTOMER acknowledge that use or disclosure of such Confidential Information in violation of this Section 6.3 may cause irreparable harm to the other party.

7.4. The Web Store includes data compiled by Acumenex which Acumenex is able to compile by reason of the use of the Web Store by its customer base. CUSTOMER agrees that Acumenex has the right to use the information that Acumenex derives from CUSTOMER's use of the Web Store as part of its compiled data, provided that no CUSTOMER-specific or patient-specific information shall be included in the compiled data provided.

8. ASSIGNMENT.

Neither Party shall assign its rights, duties or obligations under this Agreement without the prior written consent of the other Party and such consent shall not be unreasonably withheld.

9. RELATIONSHIP OF THE PARTIES.

Nothing in this Agreement is intended or shall be construed to create or establish any agency, partnership or joint venture relationship between the Parties. The Parties expressly disclaim such relationship, agree that they are acting solely as independent contractors hereunder and agree that the Parties have no fiduciary duty to one another or any other special or implied duties that are not expressly stated herein. CUSTOMER has no authority to act as agent for, or to incur any obligations on behalf of or in the name of, Acumenex or its affiliates.

10. NOTICE.

All notices required to be given under this Agreement, shall be (i) in writing, (ii) sent by Canada Post first class mail, nationally recognized overnight delivery system, confirmed facsimile, or email to the address or facsimile numbers set forth on the signature page of this Agreement, and (iii) deemed to have been given, three business days after being sent by first class mail or on the first business day at the receiving location after being sent by overnight delivery Web Store, confirmed facsimile, or email.

11. MISCELLANEOUS.

11.1. CUSTOMER shall not disclose the terms and conditions of this Agreement to third parties (except CUSTOMER's auditors or third parties whose review is mandated by law) without prior written authorization from Acumenex.

11.2. No amendment or modification of this Agreement or waiver of any rights under this Agreement shall be effective unless in writing and signed by an authorized representative of each of Acumenex and CUSTOMER.

11.3. Neither Acumenex nor CUSTOMER is responsible for failure to fulfill its obligations under this Agreement due to force majeure constituting cause beyond the reasonable control of the party and which circumstances the party reasonably could not have avoided or overcome including, but not limited to: supplier delay, force majeure, acts of God, labor unrest, fire, explosion, earthquake, accident, acts of public enemy, war, rebellion, insurrection, sabotage, terrorism, epidemic, quarantine restrictions, labor or material shortages, embargoes, failure or delays in transportation, unavailability of components, material or machinery for the Web Store, acts of governmental authorities or judicial action, or material interruption in telecommunications or utility Web Store. Further, Acumenex will not be held in breach of this Agreement if it fails to perform its obligations under this Agreement solely to the extent such nonperformance is attributable to acts, errors or omissions by CUSTOMER or a third party supplier independently hired by CUSTOMER in respect of an express obligation set forth in the Agreement or any act necessary for the performance of such express obligation by CUSTOMER or a third party supplier independently hired by CUSTOMER.

11.4. If any term or provision of this Agreement is found to be void, illegal, or unenforceable, the remaining terms and provisions of this Agreement shall be binding with the same effect as though the void, illegal, or unenforceable terms or provisions were deleted.

11.5. This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes CUSTOMER's purchase orders and all prior agreements, arrangements, and undertakings, written or oral, between the CUSTOMER and Acumenex with respect to the subject matter of this Agreement. CUSTOMER specifically acknowledges that in executing this Agreement it is not relying on any statement made by Acumenex or anyone acting or purporting to act on Acumenex' behalf except those statements which are specifically set forth in this Agreement.

11.6. This Agreement may be signed in one or more counterparts and by facsimile, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

12. DISCLAIMER AND LIMITATION OF LIABILITY.

12.1. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, AND GUARANTEES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW OR CUSTOM OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR OF ERROR-FREE AND UNINTERRUPTED USE) ARE HEREBY SUPERSEDED, EXCLUDED, AND DISCLAIMED.

12.2. CUSTOMER AGREES THAT THE LIABILITY OF ACUMENEX AND OVMA FOR DAMAGES OR INDEMNITY FOR BREACH OF WARRANTY OR ANY OTHER OBLIGATION SET FORTH IN THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, SHALL BE LIMITED TO THE FEES RECEIVED BY ACUMENEX AND OVMA FROM CUSTOMER IN RESPECT OF THE THREE MONTH PERIOD PRECEDING THE DATE ON WHICH ANY SUCH CLAIM ACCRUED.

12.3. IN NO EVENT SHALL ACUMENEX OR OVMA BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, WHETHER NOTIFIED OR NOT, AND WHETHER ARISING OUT OF BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, MISREPRESENTATION, STRICT LIABILITY IN TORT, INDEMNITY OR OTHERWISE, AND WHETHER BASED ON THIS AGREEMENT, ANY TRANSACTION PERFORMED OR UNDERTAKEN UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR OTHERWISE.

12.4. CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD ACUMENEX AND OVMA HARMLESS FROM AND AGAINST ANY CLAIM, SUIT OR ACTION BY ANY THIRD PARTY AGAINST ACUMENEX RELATING TO, ARISING OUT OF OR RESULTING FROM CUSTOMER'S MISUSE OF THE WEB STORE.

13. ADDITIONAL UNDERSTANDINGS.

13.1. Physical Server Hardware and Software Services. Acumenex will provide, maintain and operate the Physical Servers and other computer and operating system software to operate and support the Web Store.

13.2. Connection and Access. Acumenex will provide connection of the Web Store to the Internet, including all telecommunications equipment and connections for the Web Store to provide public access on a 24-hour-a-day, 7-day-a-week basis, with the exception of reasonable scheduled maintenance downtime, and any interruption access to the Web Store beyond our control caused by, but not limited to, acts of nature, equipment controlled by third parties, or third party transmission failures, or security breaches. Acumenex will notify CUSTOMER twenty-four (24) hours prior to scheduled maintenance downtime. Under no circumstances, including negligence, will Acumenex, its officers, agents or anyone else involved in creating, producing or distributing the Acumenex service be liable for any direct, indirect, incidental, special or consequential damages that result from the use of or inability to use the Acumenex service as a result of any of the foregoing circumstances. Acumenex will further not be liable for results from mistakes, omissions, interruptions, deletions of files, errors, defects, delays and operation, or transmission or failure of performance limited arising from acts of nature, communication failure, theft, destruction or unauthorized access to our records, programs or services.

13.3. Maintenance and Support Services. Acumenex will perform maintenance services as necessary to maintain the continuous operation of the Web Store. CUSTOMER agrees to reasonable periodically scheduled maintenance downtime periods, without penalty. Acumenex will provide prior notice of the maintenance downtime, except when circumstances beyond its control limit its ability to do so. Acumenex will continually monitor the Web Store and notify CUSTOMER if it discovers that the CUSTOMER Web Store has become unavailable to its intended users or is not functioning properly or in compliance with the functionality described in the Development Agreement and will work expeditiously and diligently to correct any such problems. Acumenex will provide CUSTOMER with contact information for Acumenex support personnel. In the event that CUSTOMER discovers that the CUSTOMER Web Store has become unavailable to its intended users or is not functioning properly and upon such receipt of such notice, Acumenex will work expeditiously and diligently to correct any such problems.

13.4. Security. Acumenex will implement and maintain industry standard security procedures and technology to protect against unauthorized access to the CUSTOMER Web Store, CUSTOMER Data and Service Information.

13.5. Back-up. Acumenex will implement and maintain commercially reasonable back-up procedures with respect to the CUSTOMER Web Store, CUSTOMER Data and Service Information.

13.6. Acumenex makes no representations, warranties, or assurances that Customer or their customers' equipment will be compatible with the Acumenex service.

13.7. CUSTOMER agrees not to cause or permit the reverse engineering, disassembly, or decompiling of the Acumenex Software.

13.8. CUSTOMER acknowledges that Acumenex will issue a master password to the Web Store administrator designated by the CUSTOMER. Access to the CUSTOMER Website Area will be restricted by use of passwords established and issued by the CUSTOMER's Web Store administrator. CUSTOMER agrees to comply with all security procedures established by Acumenex and in particular acknowledges its responsibility to restrict access to the Web Store. Acumenex will not be responsible for unauthorized access to the Web Store or CUSTOMER's information due to failure of CUSTOMER to change passwords or cancel or otherwise terminate access to users that CUSTOMER has determined should no longer have access to the Web Store, (e.g., access by a former CUSTOMER employee).

14. JURISDICTION AND GOVERNING LAW.

Each party acknowledges that violation by it of the provisions of Section 6.1, 6.2, and 6.3 of this Agreement, may cause irreparable damage to the other party for which any remedy at law would be inadequate and that the affected party shall be entitled either in any court of law or equity or in any arbitration proceeding, whichever forum is selected by the affected party, to (a) temporary, preliminary, permanent, and other injunctive relief against any breach of the provisions contained in such sections and (b) such punitive and compensatory damages as may be awarded.

This Agreement, shall be governed, interpreted, and construed as an agreement made and to be performed entirely in, and in accordance with, the laws of the Province of Ontario.