

PACER FOR TEAMS ENTERPRISE TERMS OF USE AGREEMENT

PLEASE READ THIS TERMS OF USE AGREEMENT CAREFULLY. THIS TERMS OF USE AGREEMENT, TOGETHER WITH THE APPLICABLE ORDER FORM THAT REFERENCES THIS TERMS OF USE AGREEMENT OR OTHERWISE ATTACHES THIS TERMS OF USE AGREEMENT, CONSTITUTE A BINDING AGREEMENT (“**AGREEMENT**”). BY CLICKING THE “ACCEPT” BUTTON OR ACCESSING OR USING THE SERVICES (AS DEFINED BELOW) OFFERED BY PACER HEALTH, INC., A DELAWARE CORPORATION (“**PACER HEALTH**”), YOU REPRESENT THAT (1) YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THIS AGREEMENT, (2) YOU ARE OF LEGAL AGE TO FORM A BINDING CONTRACT WITH PACER HEALTH (THE ORGANIZATION NAMED ON AN ORDER FORM REFERRED TO AS “**SUBSCRIBER**”), AND (3) YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THE ORGANIZATION NAMED AS THE USER, AND TO BIND THAT ORGANIZATION TO THIS AGREEMENT. **IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, YOU MAY NOT ACCESS OR USE THE SERVICES.**

1. **DEFINITIONS.** As used in this Agreement:

1.1 “Access Protocols” means the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Subscriber or any Authorized Users to access the Pacer for Teams Application.

1.2 “Authorized User” means each of Subscriber’s employees who are authorized by Subscriber to access Subscriber’s account on the Pacer for Teams Application as an administrative user.

1.3 “Documentation” means the technical materials provided or made available by Pacer Health to Subscriber in hard copy or electronic form that describe the features, functionality or operation of the Pacer for Teams Application.

1.4 “Error” means a reproducible failure of the Pacer for Teams Application to substantially conform to the Documentation.

1.5 “Intellectual Property Rights” means any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.

1.6 “Members” means Subscriber’s employees who have registered an account on the Pacer for Teams Application, agreed to Pacer Health’s terms of use, and been invited by Subscriber to join one (1) or more challenges organized through Subscriber’s account on the Pacer for Teams Application.

1.7 “Order Form” means an order form, executed by Subscriber and Pacer Health, that sets forth the Services ordered, the applicable term thereof, and the schedule of payments for the provision of the Pacer for Teams Application and/or performance of the Services, and any unique additional terms.

1.8 “Pacer for Teams Application” means the co-branded Pacer for Teams mobile and web application identified in any Order Form that is designed to boost Members’ commitment to achieving individual health goals and increase the success of organization wellness programs by creating custom challenges for Members.

1.9 “Services” means any services provided by Pacer Health to Subscriber under this Agreement as set forth in an Order Form, including, but not limited to, provision of the Pacer for Teams Application and Professional Services (as defined below).

1.10 “Subscriber Content” means any content and information provided or submitted by, or on behalf of, Subscriber, Members, or its Authorized Users for use with the Services, including but not limited to Brand Features.

2. PACER FOR TEAMS APPLICATION

2.1 Orders. Subscriber may request that Pacer Health provide the Services as specified in an Order Form. Pacer Health will provide the Services in accordance with the applicable Order Form.

2.2 Subscription to the Pacer for Teams Application. Subject to the terms and conditions of this Agreement, Pacer Health hereby grants to Subscriber, during the term of this Agreement, a non-sublicensable (except with respect to end users to whom Subscriber’s Application is distributed solely for such end users’ use of the Application), non-transferable, non-exclusive subscription to, solely for Subscriber’s internal use: (a) access and use the features and functions of the Pacer for Teams Application solely for internal purposes; (b) grant Authorized Users the right to access and use the Pacer for Teams Application; and (c) use the Documentation to assist Pacer Health with the provision of support services.

2.3 Access. Subject to Subscriber’s payment of the fees set forth in the applicable Order Form (“Fees”), and subject to any restrictions set forth therein, Pacer Health will provide Subscriber with access to the Pacer for Teams Application during the term of this Agreement. On or as soon as reasonably practicable after the Effective Date, Pacer Health shall provide to Subscriber the necessary passwords, security protocols and policies and network links or connections and Access Protocols to allow Subscriber and its Authorized Users to access the Pacer for Teams Application in accordance with the Access Protocols. Subscriber shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Pacer for Teams Application, and notify Pacer Health promptly of any such unauthorized use known to Subscriber.

2.4 Restrictions. Subscriber will not, and will not permit any Authorized User or other party to: (a) use the Pacer for Teams Application to harvest, collect, gather or assemble information or data regarding other Pacer Health subscribers or end users without their consent; (b) access or copy any data or information of other Pacer Health subscribers or end users without their consent; (c) knowingly interfere with or disrupt the integrity or performance of the Pacer for Teams Application or the data contained therein; (d) harass or interfere with another Pacer Health subscriber’s or end user’s use and enjoyment of the Pacer for Teams Application; (e) reverse engineer, disassemble or decompile any component of the Pacer for Teams Application; (f) interfere in any manner with the operation of the Pacer for Teams Application, or the hardware, devices, and network used to operate the Pacer for Teams Application; (g) sublicense any of Subscriber’s rights under this Agreement, or otherwise use the Pacer for Teams Application for the benefit of a third party or to operate a service bureau; (h) modify, copy or make derivative works based on any part of the Pacer for Teams Application; (i) access or use the Pacer for Teams Application or Services to build a similar or competitive product or service or attempt to access the Pacer for Teams Application through any unapproved interface; or (j) otherwise use the Pacer for Teams Application in any manner that exceeds the scope of use permitted under this Agreement or in a manner inconsistent with applicable law, the Documentation, or this Agreement. Subscriber acknowledges and agrees that the Pacer for Teams Application will not be used, and are not licensed for use, in connection with any of Subscriber’s time-critical or mission-critical functions. Subscriber will not remove, alter, or obscure any proprietary notices (including copyright notices) of Pacer Health or its licensors on the Pacer for Teams Application.

2.5 Support. Subject to the terms of this Agreement, Pacer Health shall use commercially reasonable efforts to maintain the security of the Pacer for Teams Application. Pacer Health may provide Subscriber with updates and upgrades for the Pacer for Teams Application in Pacer Health’s sole discretion.

Pacer Health may provide user support and any other technical assistance for the Pacer for Health Application in accordance with Pacer Health's standard support policies, and shall have the right to communicate with Authorized Users and/or Members directly in connection therewith.

2.6 Third-Party Devices. Pacer Health has no responsibility for the selection, implementation, interoperability, and performance of third-party wearable devices or other hardware that Subscriber or any Authorized User or Member uses with the Pacer for Teams Application. Subscriber and its Authorized Users are responsible for ensuring that the hardware, software, and services selected to interoperate with the Pacer for Teams Application meet the minimum requirements necessary, including, for example, the availability of dedicated Internet access, processing speed, memory and client software.

3. OWNERSHIP

3.1 Pacer Health Technology. Subscriber acknowledges that Pacer Health retains all right, title and interest in and to the Services, Pacer for Teams Application, and all software and all Pacer Health proprietary information and technology used by Pacer Health or provided to Subscriber in connection with the Pacer for Teams Application (the "**Pacer Health Technology**"), and that the Pacer Health Technology is protected by Intellectual Property Rights owned by or licensed to Pacer Health. Other than as expressly set forth in this Agreement, no license or other rights in the Pacer Health Technology are granted to Subscriber.

3.2 Feedback. Subscriber hereby grants to Pacer Health a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Pacer for Teams Application any suggestions, enhancement requests, recommendations or other feedback provided by Subscriber, including Authorized Users, relating to the Pacer for Teams Application. Pacer Health shall not identify Subscriber as the source of any such feedback.

3.3 Brand Features. Subscriber grants to Pacer Health a limited, non-exclusive license to display Subscriber's name, logos and domain names (collectively, "**Brand Features**") in connection with the development of the co-branded Pacer for Teams Applications, subject to any branding guidelines of Subscriber.

3.4 Subscriber Content. As between Subscriber and Pacer Health, Subscriber will at all times remain the exclusive owner of such Subscriber Content. Subscriber hereby grants to Pacer Health a non-exclusive, worldwide, royalty-free and fully paid license (a) to use the Subscriber Content as necessary for purposes of providing the Pacer Health Service to Subscriber, (b) to use the Subscriber trademarks, service marks, and logos as required to provide the Pacer Health Service to Subscriber and (c) to use aggregated and anonymized Subscriber Content (i) to improve the Pacer Health Services and Pacer Health's related product and service offerings; (ii) to create new products and services relating to the Pacer Health Services (including analytics services such as providing benchmarking); and (iii) to generate and disclose statistics regarding use of the Pacer Health Services, provided, however, that no Subscriber-only statistics will be disclosed to third parties without Subscriber's consent.

3.5 Third Party Software. The Pacer for Teams Application may utilize, contain or otherwise use certain third party software (collectively, the "**Third Party Software**"). Third Party Software may be subject to additional licensing terms, which Pacer Health may deliver or make available from time to time to Subscriber, which are incorporated herein by reference, and which supersede any contradictory terms in this Agreement.

4. PROFESSIONAL SERVICES. Where the parties have agreed to Pacer Health's provision of integration, design, development, operational and other professional services ("**Professional Services**"), they will enter into a mutually executed statement of work ("**SOW**") governing the provision of the initially required Professional Services. The SOW will incorporate the terms and conditions of this Agreement. To the extent that a conflict arises between the terms and conditions of the SOW and the terms of this Agreement, the terms and conditions of this Agreement will govern. The SOW will include: (i) a description of the Professional Services; (ii) the

schedule for the performance of the Professional Services; (iii) the ownership rights with respect to the work product resulting from the performance of the Professional Services (and if no such provision is provided, all ownership rights are and shall be vested in Pacer Health immediately); and (iv) Pacer Health's then-current rates for the performance of the Professional Services.

5. FEES AND EXPENSES; PAYMENTS

5.1 Fees. In consideration for the access rights granted to Subscriber and the Services performed by Pacer Health under this Agreement, Subscriber will pay to Pacer Health the Fees. Except as otherwise provided in the applicable Order Form, all Fees hereunder are billed in advance and are due and payable to Pacer Health within thirty (30) days of receipt of invoice. Pacer Health reserves the right to modify the Fees payable hereunder upon written notice to Subscriber at least sixty (60) days prior to the end of the then-current term. Pacer Health reserves the right (in addition to any other rights or remedies Pacer Health may have) to discontinue the Pacer for Teams Application and suspend all Authorized Users' and Subscriber's access to the Pacer for Teams Application if any Fees are overdue until such amounts are paid in full. Subscriber will maintain complete, accurate and up-to-date Subscriber billing and contact information at all times. Interest will accrue on late payments at one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid.

5.2 Taxes. All Fees owed by Subscriber in connection with this Agreement are exclusive of, and Subscriber will pay, all sales, use, excise and other taxes and applicable export and import fees, customs duties and similar charges that may be levied upon Subscriber in connection with this Agreement, except for employment taxes for Pacer Health employees and taxes based on Pacer Health's net income.

5.3 Disputes. You must notify us in writing within seven (7) days after receiving your invoice, if you dispute any of our charges or such dispute will be deemed waived. Billing disputes should be notified to eric.mcgraw@mypacer.com. We shall have the right to determine the resolution for any such dispute, in our reasonable discretion.

6. SUBSCRIBER RESPONSIBILITIES

6.1 Subscriber Warranty. Subscriber represents and warrants that any Subscriber Content hosted by Pacer Health as part of the Pacer for Teams Application shall not (a) infringe, misappropriate or violate any Intellectual Property Rights, publicity/privacy rights, law or regulation; (b) be deceptive, defamatory, obscene, pornographic or unlawful; (c) contain any viruses, worms or other malicious computer programming codes intended to damage, surreptitiously intercept or expropriate any system, data or personal or personally identifiable information; or (d) otherwise violate the rights of a third party. Subscriber represents and warrants that it has procured all rights and licenses and has all power and authority necessary to grant the rights granted to Pacer Health hereunder without the consent of any third party, and the exercise of Pacer Health's rights under this Agreement will not require the acquisition of rights from or payment of money to any third party. Subscriber agrees that any use of the Pacer for Teams Application contrary to or in violation of the representations and warranties of Subscriber in this Section 6.1 constitutes unauthorized and improper use of the Pacer for Teams Application.

6.2 Subscriber Responsibility for Data and Security. Pacer Health is not obligated to back up any Subscriber Content; the Subscriber is solely responsible for creating backup copies of any Subscriber Content at Subscriber's sole cost and expense. Subscriber and its Authorized Users shall have access to the Subscriber Content and shall be responsible for all changes to and/or deletions of Subscriber Content and the security of all passwords and other Access Protocols required in order to access the Pacer for Teams Application. Subscriber shall have the ability to export Subscriber Content out of the Pacer for Teams Application and is encouraged to make its own back-ups of the Subscriber Content. Subscriber shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Subscriber Content.

7. WARRANTY AND DISCLAIMER

7.1 Limited Warranty. Pacer Health warrants to Subscriber that, when used as permitted by Pacer Health and in accordance with the Documentation, the Pacer for Teams Application will operate free from Errors during the term of the Agreement. Provided that Subscriber notifies Pacer Health in writing of any breach of the foregoing warranty during the term hereof, Pacer Health shall, as Subscriber's sole and exclusive remedy, provide the support in accordance with Pacer Health's standard support terms.

7.2 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7.1 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES, PACER FOR TEAMS APPLICATION AND DOCUMENTATION ARE PROVIDED AS IS," "AS AVAILABLE," AND WITH ALL FAULTS, AND PACER HEALTH AND ITS AFFILIATES, SUPPLIERS, CONTRACTORS, AND LICENSORS HEREBY DISCLAIM ALL OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, RELATING TO THE SERVICES, PACER FOR TEAMS APPLICATION, AND DOCUMENTATION WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. PACER HEALTH DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE PACER FOR TEAMS APPLICATION SHALL BE UNINTERRUPTED, SECURE, OR ERROR-FREE. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR CONDITIONS OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO SUBSCRIBER.

8. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SUBSCRIBER AGREES THAT IN NO EVENT WILL PACER HEALTH AND ITS AFFILIATES, SUPPLIERS, CONTRACTORS, OR LICENSORS WILL BE RESPONSIBLE FOR ANY LOSS OR DAMAGE CAUSED BY THE FAILURE OF THE PACER FOR TEAMS APPLICATION OR FOR LOSS OR INACCURACY OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE SERVICES, GOODS OR TECHNOLOGY. IN NO EVENT WILL PACER HEALTH OR ITS AFFILIATES, SUPPLIERS, CONTRACTORS, OR LICENSORS BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES, INCLUDING LOST PROFITS AND LOST DATA, IN CONNECTION WITH THIS AGREEMENT, THE SERVICES, PACER FOR TEAMS APPLICATION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, PACER HEALTH'S AND ITS AFFILIATES', SUPPLIERS', CONTRACTORS', AND LICENSORS' AGGREGATE CUMULATIVE LIABILITY UNDER OR RELATING TO THIS AGREEMENT (INCLUDING THE SERVICES, PACER FOR TEAMS APPLICATION AND THE DOCUMENTATION) WILL NOT EXCEED THE AMOUNT PAID BY SUBSCRIBER TO PACER HEALTH FOR THE USE AND ACCESS TO THE PACER FOR TEAMS APPLICATION DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE EVENT WHICH GAVE RISE TO THE CLAIM. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT SERVE TO ENLARGE THIS LIMIT. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SET FORTH HEREIN WILL REMAIN IN EFFECT.

9. CONFIDENTIALITY. "Confidential Information" means any nonpublic information of a party (the "Disclosing Party"), whether disclosed orally or in written or digital media, that is identified as "confidential" or with a similar legend at the time of such disclosure or that the receiving party (the "Receiving Party") knows or should have known is the confidential or proprietary information of the Disclosing Party. Information will not constitute the Disclosing Party's Confidential Information if it (i) is already known by the Receiving Party without obligation of confidentiality; (ii) is independently developed by the Receiving Party without access to or use of the Disclosing Party's Confidential Information; (iii) is publicly known without breach of this Agreement; or (iv) is lawfully received from a third party without obligation of confidentiality. The Receiving Party agrees (a) not to use or disclose any Confidential Information except as expressly authorized by this Agreement; (b) to protect the Disclosing Party's Confidential Information using the same degree of care that it uses with respect to its own confidential information, but in no event with safeguards less than a reasonably prudent business would exercise under similar circumstances; (c) to hold the Disclosing Party's Confidential Information in strict confidence; and (d)

to limit access to the Disclosing Party's Confidential Information to those of its employees, agents or Authorized Users having a need to know and who are bound by confidentiality obligations at least as restrictive as those contained herein. Notwithstanding the foregoing, the Receiving Party will not be in violation of this Section 9 with regard to a disclosure that was in response to a valid order or requirement by a court or other governmental body or otherwise required by law, provided that the Receiving Party gives the Disclosing Party prior written notice of such disclosure in order to permit the Disclosing Party to seek an appropriate protective order.

10. INDEMNIFICATION

10.1 By Pacer Health. Pacer Health will defend at its expense any suit brought against Subscriber, and will pay any settlement Pacer Health makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim by any third party alleging that the Pacer for Teams Application infringes, misappropriates or violates any third party Intellectual Property Rights. If any portion of the Pacer for Teams Application becomes, or in Pacer Health's opinion is likely to become, the subject of a claim of infringement, Pacer Health may, at Pacer Health's option: (a) procure for Subscriber the right to continue using the Pacer for Teams Application; (b) replace the Pacer for Teams Application with non-infringing software or services which do not materially impair the functionality of the Pacer for Teams Application; (c) modify the Pacer for Teams Application so that it becomes non-infringing; or (d) terminate this Agreement and refund any fees actually paid by Subscriber to Pacer Health for the remainder of the term then in effect, and upon such termination, Subscriber will immediately cease all use of the Services, Pacer for Teams Application, and Documentation. Notwithstanding the foregoing, Pacer Health shall have no obligation under this Section 10.1 or otherwise with respect to any infringement claim based upon (i) any use of the Pacer for Teams Application not in accordance with this Agreement or as specified in the Documentation; (ii) any use of the Pacer for Teams Application in combination with other products, equipment, software or data not supplied by Pacer Health, including but not limited to wearable devices; or (iii) any modification of the Pacer for Teams Application by any person other than Pacer Health or its authorized agents (collectively, "**Exclusions**"). This Section 10.1 states Pacer Health's entire liability and Subscriber's sole and exclusive remedy for the claims and actions described herein.

10.2 By Subscriber. Subscriber will defend at its expense any suit brought against Pacer Health, and will pay any settlement Subscriber makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim arising out of or relating to (a) an Exclusion; (b) Subscriber's (or its Authorized User's) use of the Services, Pacer for Teams Applications, or Documentation, except to the extent the claim is subject to indemnification under Section 10.1 above or caused by Pacer Health's gross negligence or willful misconduct; or (c) Subscriber's breach or alleged breach of Section 6.1. This Section sets forth Subscriber's entire liability and Pacer Health's sole and exclusive remedy for the claims and actions described herein.

10.3 Procedure. Any party that is seeking to be indemnified under the provisions of this Section 10 (an "**Indemnified Party**") must (a) promptly notify the other party (the "**Indemnifying Party**") in writing of any third-party claim, suit, or action for which it is seeking an indemnity hereunder, (b) give the Indemnifying Party sole control over the defense of such claim, suit or action and any related settlement negotiations, and (c) cooperating and, at Indemnifying Party's reasonable request and expense, assisting in such defense.

11. TERM AND TERMINATION

11.1 Term. This Agreement will begin on the Effective Date and continue in full force and effect as long as any Order Form remains in effect, unless earlier terminated in accordance with the Agreement (the "**Term**"). Unless otherwise stated in the applicable Order Form, the term of an Order Form will begin on the effective date of the Order Form and continue in full force and effect for one (1) year, unless earlier terminated in accordance with the Agreement. Thereafter, the Order Form will automatically renew for additional terms of one (1) year unless either party gives written notice of non-renewal to the other party at least sixty (60) days prior to the expiration of the then-current term.

11.2 Termination. Either party may terminate this Agreement immediately upon notice to the other party if the other party materially breaches this Agreement, and such breach remains uncured more than thirty (30) days after receipt of written notice of such breach.

11.3 Effect of Termination. Upon termination or expiration of this Agreement for any reason: (a) all rights and obligations of both parties, including all licenses granted hereunder, shall immediately terminate; (b) any amounts owed to Pacer Health under this Agreement will become immediately due and payable; and (c) each party will return to the other all property (including any Confidential Information and Subscriber Content) of the other party. The sections and subsections titled *Definitions, Restrictions, Ownership, Fees and Expenses; Payment, Limitation of Liability, Confidentiality, Effect of Termination, and Miscellaneous* will survive expiration or termination of this Agreement for any reason. No Fees will be refunded in the event of termination except as expressly authorized by Pacer Health.

12. MISCELLANEOUS

12.1 Governing Law and Venue. This Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of California, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. Subscriber hereby expressly consents to the personal jurisdiction and venue in the state and federal courts for the county in which Pacer Health's principal place of business is located for any lawsuit filed there against Subscriber by Pacer Health arising from or related to this Agreement. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Subscriber shall always comply with all international and domestic laws, ordinances, regulations, and statutes that are applicable to its purchase and use of the Services, Pacer for Teams Application, or Documentation.

12.2 Export. Subscriber agrees not to export, reexport, or transfer, directly or indirectly, any U.S. technical data acquired from Pacer Health, or any products utilizing such data, in violation of the United States export laws or regulations.

12.3 Severability. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

12.4 Waiver. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

12.5 No Assignment. Neither party shall assign, subcontract, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of the other party, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void; provided, however, that either party may assign this Agreement in connection with a merger, acquisition, reorganization or sale of all or substantially all of its assets, or other operation of law, without the consent of the other party. The terms of this Agreement shall be binding upon the parties and their respective successors and permitted assigns.

12.6 Force Majeure. Pacer Health will not be liable hereunder by reason of any failure or delay in the performance of its obligations under this Agreement on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or any other cause that is beyond the reasonable control of Pacer Health.

12.7 Independent Contractors. Subscriber's relationship to Pacer Health is that of an independent contractor, and neither party is an agent or partner of the other. Subscriber will not have, and will not represent to any third party that it has, any authority to act on behalf of Pacer Health.

12.8 Notices. All notices or other communications required or permitted under this Agreement will be in writing to the other party at the address listed on the signature page and will be delivered by personal delivery, certified overnight delivery such as Federal Express, or registered mail (return receipt requested) and will be

deemed given upon personal delivery or upon confirmation of receipt. Each party may change its address for receipt of notice by giving notice of such change to the other party.

12.9 Order of Precedence. In the event of any conflict between the provisions in this Agreement and any Order Form, the terms of the Order Form will prevail, but only with respect to the Services to be performed under such Order Form (with the most recent prevailing over a previously executed Order Form).

12.10 Entire Agreement. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the parties with respect to such subject matters. No modification of or amendment to this Agreement, or any waiver of any rights under this Agreement, will be effective unless in writing and signed by an authorized signatory of Subscriber and the Pacer Health.