

## **PacerDash Terms of Service**

**Last modified: March 21, 2018**

Pacer Monkey LLC (the “**Company**” or “**we, us, our**”) provides its products at services to you subject to this Terms of Service Agreement (the “**Terms**”), which may be updated by the Company from time to time without notice to you.

Please review the Terms carefully as they contain important information regarding your legal rights, remedies, and obligations.

### **1. Scope of Site and Services**

The “**Site**” refers to any website provided by the Company, including but not limited to the websites located at “[www.pacerdash.com](http://www.pacerdash.com)”, “[app.pacerdash.com](http://app.pacerdash.com)”, and all other subdomains of “[pacerdash.com](http://pacerdash.com)”.

The “**Service**” includes the Site, and also any content or data directly or indirectly obtained through use of the Site, including by not limited to, any text, images, videos, statements, media, dockets, court filings, digital files, emails, and notifications.

“**You**” and “**Your**” (or “**you, your**”) refer to the person who is agreeing to the Terms, individually and in your individual capacity as an employee, officer, agent, partner, affiliate, manager, or director, of each organization you represent in connection your use of the Service.

### **2. Acceptance of Agreement**

Your use of the Service is subject to the Terms. By using the Service, you agree that you have read the Terms fully, that you have accepted the Terms, and that the Terms constitute a binding and enforceable agreement between you and the Company.

Even if you have not formally registered for the Service, you are still bound by the Terms if you use or access any part of the Service. This includes but is not limited to receiving email notifications or accessing data provided by another registered user of the Service.

The Service is available only to U.S. entities and persons at least eighteen (18) years of age who can form legally binding agreements under applicable law. If you do not qualify, you are not permitted to use the Service.

If you do not agree to the Terms, you are prohibited from registering, accessing, or using any part of the Site or the Service.

### **3. PACER**

The Service provides access to content available on the United States Public Access to Court Electronic Records system (“**PACER**”). The Company has no official affiliation with PACER, the Administrative Office of U.S. Courts, nor any other government entity.

By using the Service, you represent that you are an authorized user of PACER. You agree that you will not use the Service in any way that would violate any pre-existing terms of service with PACER.

#### **4. PACER Credentials**

Certain features of the Service require that you to provide us with the username and password for your PACER account (your “**PACER Credentials**”).

By providing your PACER Credentials to us, you agree to allow us to store and use the PACER Credentials in a manner consistent with providing the Service to you. This includes but is not limited to storing and using your PACER Credentials on any server, database, or cloud computing instance, including those provided by third parties.

**YOU AGREE THAT YOU ARE PROVIDING YOUR PACER CREDENTIALS TO THE COMPANY AT YOUR OWN RISK.**

You agree that the security of your PACER Credentials could be compromised by any number of factors, both within and outside the Company’s control, including but not limited to:

- (a) A data or security breach relating to any software, server, database, or cloud computing instance utilized by the Company. This includes but is not limited to any software, server, database, cloud computing instance, or technology provided by any third party such as Amazon, Heroku, or Contributed Systems, or any open-source software or technology;
- (b) A data or security breach relating to any server, system, software, or technology owned or operated by the U.S. government, whether it is part of the PACER system or not;
- (c) Any technical error or software bug on the Site or the Service, including errors contained in the application source code or within any third party or open source software;
- (d) Any breach of the Terms by you, such as your failure to maintain the security and confidentiality of your login for the Service;

The Company may take voluntary measures to protect the security of your PACER Credentials. These measures may include encrypting passwords, limiting database access, and rotating encryption keys. These steps do not impose on the Company any obligation, legal or otherwise, with respect to the security of your PACER Credentials.

You agree that the Company is under no obligation to comply with any security standard with respect to your PACER Credentials. You agree that the Company is under no obligation to monitor the security of your PACER Credentials.

You agree that the Company is not liable for any losses or damages arising from any security or data breach of your PACER Credentials, even if such breach was due to the direct fault or negligence of the Company.

You agree to take reasonable measures to protect the security of your PACER Credentials and to limit any potential damages arising from any potential data breach. The Company recommends that you change the password associated with your PACER Credentials at least once every six months.

## 5. PACER Requests

You authorize us to use your PACER Credentials to make requests to PACER on your behalf (“**PACER Requests**”). PACER Requests include both requests that are executed immediately upon initiation by you (“**Contemporaneous PACER Requests**”) and requests scheduled for automated execution at specified times or intervals (“**Scheduled PACER Request**”).

YOU AGREE THAT USING THE SERVICE TO MAKE PACER REQUESTS IS AT YOUR OWN RISK.

You agree that the execution of any PACER Request is not guaranteed. You agree that any PACER Request can fail for a variety of reasons, including but not limited to software bugs, PACER downtime, network outages, or user error.

You agree that you will not rely on the accuracy, completeness, or timeliness of any PACER Request. You agree that you will not hold the Company responsible for any damages, direct or indirect, related to any execution or failed execution of any PACER Request. These include but are not limited to failed requests, redundant requests, incomplete requests, incorrect requests, or any other request that deviates from your expectations.

The Service may allow you to view a log of PACER Requests we have executed for you. The Company is under no obligation to maintain or provide such a log, and makes no representations to the accuracy or completeness of such a log.

## 6. PACER Fees

Certain features of the Service will result in fees posted directly to your PACER account (“**PACER Fee, PACER Fees**”).

YOU AGREE THAT YOU ALONE ARE RESPONSIBLE FOR PAYING ANY AND ALL PACER FEES. YOU AGREE THAT YOU WILL NOT HOLD THE COMPANY LIABLE FOR ANY PACER FEES.

You agree that the Company will not pay, reimburse, or otherwise compensate you for ANY PACER Fees.

Below is a non-exhaustive list of PACER Fees that you agree to pay:

- (a) All fees relating to any PACER Request made by the Service;
- (b) All fees arising from any user, software, technical error, regardless of whether such error was within the Company’s control or at the fault of the Company. This includes but is not limited to redundant or duplicate fees, or fees associated with any PACER Request that was improperly executed, downloaded, captured, or otherwise made available to you;
- (c) All fees relating to any Scheduled PACER Request, even if such fees resulted from a user or software error in the timing or frequency of such requests;
- (d) All fees incurred by any party due to a data or security breach of your PACER Credentials, regardless of the Company’s control or fault;
- (e) All fees incurred due to an unauthorized use the Service;

You agree that the Company is under no obligation to provide any notices or estimates of PACER Fees, including prior, during, or after the execution of any PACER Request. To the extent that the Company does provide estimates of PACER Fees, you agree not to rely on the accuracy or completeness of any such estimates. Any estimates of PACER Fees provided by the Company have no bearing on your sole obligation to pay any and all PACER Fees posted to your PACER account.

## **7. PACER Fee Logs**

The Service may provide you with a history of PACER Fees incurred by the Service (the “**PACER Fee Log**”). This history is generated by parsing the “Transaction Receipts” associated with each PACER Request.

The PACER Fee Log is not a comprehensive log of your PACER Fees. It contains, at most, only the PACER Fees associated with the PACER Requests incurred through use of our Service. It does not contain any PACER Fees posted to your PACER account via other sources.

The Company does not make any representations as to the accuracy or comprehensiveness of the PACER Fee Log. Errors in the PACER Fee Log could arise due to improper parsing (see *infra* at “Parsed PACER Content”), or other software or network failures. You agree not to rely on the accuracy or completeness of the PACER Fee Log in any way.

**YOU MUST CHECK DIRECTLY WITH PACER TO OBTAIN AN ACCOUNTING OF YOUR PACER FEES.**

You agree that the Company is under no obligation to provide you with any accounting, monitoring, logging, or notice of your PACER Fees, regardless of whether the fees were incurred through use of the Service. You agree that you alone are responsible for monitoring your PACER Fee usage.

You agree that you will regularly check your PACER Fees directly on PACER. In the event that you become aware of any unauthorized PACER Fees you will: (a) immediately notify the Company; (b) immediately suspend all Scheduled PACER Requests; (c) change the password for your PACER Credentials; and (d) take any additional steps to mitigate and limit losses or damages.

## **8. PACER Content**

We have no control over content provided by PACER (“**PACER Content**”). This includes but is not limited to cases, dockets, filings, schedules, and party information. The Company has no obligation to monitor, check, or otherwise verify PACER Content. You agree the Company is not liable for any loss or damage which may be incurred as a result of your reliance on the availability, integrity, completeness, quality, or accuracy of any PACER Content.

The Company is under no obligation to maintain your access to any PACER Content through our Service. This includes PACER Content you have purchased. The Company reserves the right to remove any PACER Content from the Service at any time, for any reason, with or without notice.

You agree that the Company has an unrestricted right to use any PACER Content royalty free and without limitation. This includes any content that we have retrieved for you using your PACER Credentials and any content that you have paid for.

## **9. Parsed PACER Content**

The Service obtains files directly from PACER and then attempts to parse this content to provide it to you in a more usable form (“**Parsed PACER Content**”).

The Company makes no representations as to the accuracy of Parsed PACER Content. You agree the Company is not liable for any loss or damage which may be incurred as a result of your reliance on the availability, integrity, completeness, quality, or accuracy of any Parsed PACER Content.

## **10. Third Party Content**

“**Third Party Content**” refers to any content available on the Service that is not provided by the Company. You agree that the Company has no control over Third Party Content, and is no obligation to monitor, verify, or check the availability, integrity, completeness, quality, or accuracy of any Third Party Content. Under no circumstances is the Company liable for any loss or damage arising from your reliance on Third Party Content.

## **11. Prohibited Uses**

You agree not to disable any encryption or security features implemented by the Service.

You agree not to disassemble, decompile or reverse engineer the Service or otherwise attempt to discover the source code for the Service.

You agree not to attempt to access the Service via any interface other than the web interface provided by the Company.

You agree not to access the Service using any account other than your own. You agree not to share your account login details with anyone else.

You agree not to create any derivative work based on the Service.

You agree not to engage in any activity that will interfere with or disrupt the Service.

You agree not to use any program, script, bot, spider, or crawler to scrap, collect, harvest, or gather content from the Service.

You agree not to use the Service for any unlawful purpose.

## **12. Modifications and Terminations of Service**

We reserve the right to take any of the following actions temporarily or permanently, in our sole discretion at any time and for any reason without giving you any prior notice:

(a) restrict, suspend or terminate your access to all or any part of the Service;

- (b) update, modify, suspend or discontinue all or any part of the Service;
- (c) modify any content that is available through the Service;
- (d) modify the pricing of all or any part of the Service;
- (e) deactivate or delete your account and all related information and files in your account; and
- (f) establish general practices and limits concerning access to the Service.

You agree that the Company will not be liable to you or any third party for modifying or terminating your use or access to the Service.

### **13. Revisions to the Terms**

The Company reserves the right to modify, change, or update the Terms at any time. A current copy of the Terms will be made available on the Service. The Company will make reasonable efforts to notify you of any material changes to the Terms.

Your continued use of the Service after any revision to the Terms constitutes acceptance of any modified, changed, or revised provisions contained in the Terms.

You consent to receive electronic notice of revisions to the Terms, along with any other notices from the Company, at the email address you provided at registration. Failing to provide a valid email address or use the Service without formally registering does not exempt you from being bound by the Terms.

### **14. Ownership**

Notwithstanding your use of the Service, the Company retains all right, title and interest in and to the Service including its underlying source code. You agree that no ownership rights to the Service are granted to you.

### **15. Privacy**

You consent to allow the Company to collect information about you and share that information with third parties or the government to the extent permitted by law.

### **16. Third Party Links**

Links to third party websites from the Service are meant for convenience only. The Company does not review or control any third party websites and is not responsible for any third party websites or the content of those sites. Inclusion of any linked website does not imply approval or endorsement of the linked website by us.

### **17. Disclaimer, No Implied Warranty**

We provide this Service and its contents "AS IS." We make no express warranties or guarantees about the Service.

TO THE EXTENT PERMITTED BY LAW, WE DISCLAIM IMPLIED WARRANTIES INCLUDING ANY WARRANTY THAT THE SERVICE IS OR WILL BE MERCHANTABILITY, OF SATISFACTORY QUALITY, ACCURATE, TIMELY, FIT FOR A PARTICULAR PURPOSE OR NEED, OR NON-INFRINGEMENT. WE DO NOT GUARANTEE THAT THE SERVICE WILL MEET YOUR REQUIREMENTS, IS ERROR-FREE, RELIABLE, OR WILL OPERATE WITHOUT INTERRUPTION.

You acknowledge and agree that the Service is provided for general information only. We make no guarantees as to the completeness or accuracy of, nor can we accept any responsibility for, any errors appearing in the Service. YOU ACKNOWLEDGE AND AGREE THAT NO INFORMATION AVAILABLE THROUGH THE SERVICE IS TO BE RELIED UPON, AND YOU FURTHER AGREE TO INDEPENDENTLY VERIFY ANY INFORMATION PROVIDED AS PART OF THE SERVICE AND WHICH YOU INTEND TO RELY UPON, AND, IF REASONABLY NECESSARY, YOU SHOULD SEEK THE ASSISTANCE OF AN ATTORNEY IN DOING SO.

### **18. Limitations of Liability**

To the fullest extent permitted by applicable law, you agree that the Company will not be liable for any losses or damages of any kind arising from any use, reliance, or failure to access the Service. You agree that Company shall not be liable for any indirect, special, incidental, consequential or exemplary damages.

Under no circumstances shall the Company have any liability to any person or entity for any loss or damage in whole or in part due to any error (negligent or otherwise) within or outside the control of the Company or any of its managers, directors, officers, partners, employees or agents in connection with any such information.

### **19. Indemnification**

You agree to defend, indemnify, and hold harmless the Company and our employees, contractors, officers, directors, managers, partners, and agents from all liabilities, claims, and expenses, including attorney's fees, that arise from your use or misuse of the Service. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with us in asserting any available defenses.

### **20. Entire Agreement, Severability, and Integration**

Except as otherwise provided, the Terms and any supplemental terms, policies, rules and guidelines posted on the Service constitute the entire agreement between you and the Company, and supersede all previous written or oral agreements. If any part of the Terms is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect.

## **21. Waiver**

No delay or failure of either party to exercise any right or remedy, enforce any obligation, or exercise any option under the Terms will be construed as a waiver of such right, remedy, provision or option, or of any other term or condition of the Terms, and no waiver will be effective unless consented to in a writing signed by an authorized representative of the waiving party. The waiver of any breach or default will not constitute a waiver of any other right hereunder or any prior, concurrent, or subsequent breach or default.

## **22. Governing Law**

Without limitation to your consent to binding arbitration set forth below, any claim against the Company or otherwise relating to your use of the Service shall be governed by the laws of the United States of America and the State of New York without regard to its conflict of law provisions. You agree that the forum for any claim arising thereunder will be in the U.S. District Court for the Southern District of New York or the appropriate New York state court.

## **23. Binding Arbitration**

You agree that any disputes or claims that you may have against the Company will be (except as stated below) finally and exclusively resolved by binding arbitration. Any election to arbitrate by one party shall be final and binding on the other. The arbitration shall be commenced and conducted under the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) and, where appropriate, the AAA’s Supplementary Procedures for Consumer Related Disputes (“AAA Consumer Rules”), both of which are available on the AAA web site [www.adr.org](http://www.adr.org). The determination of whether a dispute is subject to arbitration shall be governed by the Federal Arbitration Act and determined by a court rather than an arbitrator. Your arbitration fees and your share of arbitrator compensation shall be governed by the AAA Rules and, where appropriate, limited by the AAA Consumer Rules.

The arbitration may be conducted in person, through the submission of documents, by phone or online. The arbitrator will make a decision in writing, and will provide a statement of reasons if requested by a party. Except as otherwise provided in the Terms, you and the Company may litigate in court to compel arbitration, stay proceeding pending arbitration, or to confirm, modify, vacate or enter judgment on the award entered by the arbitrator. **YOU UNDERSTAND THAT ABSENT THIS PROVISION, YOU WOULD HAVE THE RIGHT TO SUE IN COURT AND HAVE THE RIGHT TO A JURY TRIAL.**