Welcome! Please take a moment to scroll down and read these Terms of Use.

Pacira Pharmaceuticals, Inc. ("Pacira," “we,” “us,” or “our”) invites you to access and use our TRACK THAT mobile application (“App”) and provider platform (“Platform”). These Terms of Use govern your access and use of the App and Platform (together, the “Services”), which includes any information, data, tools, products, services and other content (together, “Content”) available on or through the App. Please read these Terms of Use (“Terms”) carefully.

By downloading the App or using the Platform you acknowledge that you have read, understood, and agree to be legally bound by these Terms of Use and our Privacy Policy, which is hereby incorporated by reference (collectively, this Agreement”), and you represent and warrant that you are at least 18 years old or older. These Terms of Use may be updated by us from time to time with or without notice to you. Capitalized terms not defined in these Terms of Use shall have the meaning set forth in our Privacy Policy.

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE USING THE SERVICES. EACH TIME YOU ACCESS OR USE THE SERVICES, YOUR ACCESS OR USE INDICATES YOUR FULL ACCEPTANCE OF AND AGREEMENT TO ABIDE BY THIS AGREEMENT IN ITS THEN CURRENT FORM, INCLUDING ANY MODIFICATIONS POSTED. IF YOU DO NOT ACCEPT THE TERMS OF USE, DO NOT USE THE SITE. THE SECTIONS BELOW TITLED “BINDING ARBITRATION” AND “CLASS ACTION WAIVER” CONTAIN A BINDING ARBITRATION AGREEMENT AND CLASS ACTION WAIVER. THEY AFFECT YOUR LEGAL RIGHTS. PLEASE READ THEM.

1. NO MEDICAL ADVICE

You acknowledge and agree that Pacira does not provide any form of medical care, medical opinion, medical advice, diagnosis, cure, mitigation, prevention of disease, or treatment, and that Pacira does not evaluate the need to seek medical attention through the Services. The contents of the Services, such as questionnaires, instructions, and other material contained on the Services are for informational purposes only. Although such content may be provided by individuals in the medical profession (including your Provider), the provision of such content does not create a doctor-patient relationship with Pacira, and does not constitute a medical opinion, medical advice, diagnosis or treatment of any particular condition. The content is not intended to be a substitute for professional medical advice, diagnosis, or treatment. We make no representations that any information provided via the Services is accurate, current, reliable or complete. You are solely responsible for evaluating the risks and merits regarding the use of the Services and any services provided herein. You should always seek the advice of your physician or other qualified healthcare provider for any questions you may have regarding a medical condition. Never disregard professional medical advice or delay seeking such advice because of something read or learned through use of the Services or any information stored on, generated by, or received through the Services. If you think you have a medical emergency, call your doctor or 911 immediately.

You acknowledge and agree that the Services do not involve the counseling or promotion of a business arrangement that violates state or federal law. You further acknowledge and agree that the provision of the Services by Pacira is not intended to be, nor shall it be construed as, an offer or payment made, whether directly or indirectly, to induce a health care provider to prescribe or switch patients to any of Pacira’s products or to influence or affect a health care provider’s independent clinical judgment, or to induce the referral of patients, the purchase, lease, or order of any prescription drugs, items, products, or services, or
the recommending or arranging for the purchase, lease, or order of any prescription drugs, items, products, or services by any health care provider, patient or other third party.

2. **DESCRIPTION AND USE OF THE SERVICES**

(a) **The App.** The App provides real-time monitoring and analysis tools that streamline patient-provider communications and tracking and monitoring of patient treatment. The App provides a variety of services to people undergoing treatment for pain management (each, a “Patient”) and his/her health care clinician providing pain management services (“Provider”), including, but not limited to: (1) access to surgery instructions, surgery information, and questionnaires provided by Provider; (2) ability to track and record Patient daily activity and biometric health data by connecting the App to a wearable device (“Wearable”); (3) ability to collect specific patient information through responses to questionnaires; (4) ability for Patient-Provider communications through certain messaging functions; and (5) Provider viewing, documenting and tracking of Patient progress through the Platform accessed via computer. For the avoidance of doubt, the term Provider also includes any support personnel and administrative personnel authorized by Provider to use, disclose, access, view, submit and/or process Patient Generated Content and Provider Generated Content (as defined in the Terms of Use) through the App or Platform.

(b) **The Platform.** The Platform is a web-app/dashboard accessed via computer, through which Pacira provides Providers with access to Patient-Provider communications tools and tracking and monitoring of patient treatment. The Platform enables Providers to provide services to Patients, including but not limited to, (1) viewing, documenting and tracking surgery information and Patient responses to questionnaires; (2) tracking and recording Patient daily activity and biometric health data through the use of a Wearable; and (3) communicating with Patients through certain messaging functions.

(c) **License to Use the Services.** Pacira hereby grants you a limited, non-exclusive, non-transferable license to download and install a copy of the App on a single mobile device that you own or control and to run such copy of the App solely for your own personal use. Pacira hereby grants Providers a limited, non-exclusive, non-transferable license to access the Platform for use in conjunction with the TRACK THAT program. We reserve all rights in and to the Services not expressly granted to you under these Terms. At any time and for any reason we may revoke your right to use all or any portion of the Services. You agree not to interfere with the operation of the Services, violate or attempt to violate the security of the Services, or to use the Services for any fraudulent, harmful or illegal purposes.

(d) **Fees.** The Services is currently provided to you for free. However, we reserve the right to begin charging fees at any time upon notice to you.

(e) **Wearable.** If you are a Patient, any Wearable provided to you by your Provider for the TRACK THAT program is for the limited purposes and Services described herein. Upon conclusion or termination of your participation, you must promptly return the Wearable to your Provider.

(f) **Technical Problems.** All or any portion of the Services may not be available and may not function properly at any time. Pacira makes reasonable efforts to avoid technical problems, but at any time the Services may have and may cause technical problems such as viruses and other damaging computer programming routines or engines. You agree that Pacira is not liable for any damage or injury caused by the performance or failure of performance of all or any portion of the Services or any defects, delays or errors in or resulting from your use of the Services.
3. **REGISTRATION**

If you would like to use the App, you will need to download the App through a unique website link sent to you via email by Pacira. If you are a Patient, you will need to register for an account upon downloading the App. If you are a Provider, your support/administrative personnel will send you an email with the username and password for your Provider account. Upon downloading the App or accessing the Platform, you will be able to login using your user name and password. The portions of the Services which are password-protected may be accessed only by users who have been issued passwords by Pacira. You are responsible for the confidentiality of your account. You will promptly inform us of any need to deactivate an account. We reserve the right to delete or change your user name and/or password at any time and for any reason. We are under no obligation to accept any individual as a Patient or Provider, and may accept or reject any registration in its sole and complete discretion.

4. **USE OF PERSONAL INFORMATION**

Your use of the Services may involve the transmission to Pacira of certain Personal Information. Our policies with respect to the collection and use of personal information are governed according to our Privacy Policy, located [here](#), which is hereby incorporated by reference in its entirety.

5. **COMMUNITY GUIDELINES**

By accessing and/or using the Services, you hereby agree that:

- You will not use the Services for any unlawful purpose;

- You will not upload, post, e-mail, transmit, or otherwise make available any content that:
  - infringes any copyright, trademark, right of publicity, or other proprietary rights of any person or entity; or
  - is threatening, tortious, defamatory, libelous, indecent, obscene, pornographic, sexually explicit, invasive of another’s privacy, promotes extreme violence or cruelty to animals, or contains hate speech (i.e., speech that attacks or demeans a group based on race or ethnic origin, religion, disability, gender, age, veteran status, and/or sexual orientation/gender identity; or
  - discloses any sensitive information about another person, including that person’s e-mail address, postal address, phone number, credit card information, health information, or any similar information.

- You will not “stalk” or otherwise harass another;

- You will not impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity;

- You will not interfere with or attempt to interrupt the proper operation of the Services through the use of any virus, device, information collection or transmission mechanism, software or routine, or access or attempt to gain access to any data, files, or passwords related to the Services through hacking, password or data mining, or any other means;

- You will not access or use the Services to collect any market research for a competing business;
• You will not cover, obscure, block, or in any way interfere with any advertisements and/or safety features (e.g., report abuse button) on the Services;

• You will not use any robot, spider, scraper, or other automated means to access the Services for any purpose without our express written permission; provided, however, we grant the operators of public search engines permission to use spiders to copy materials from the public portions of the Services for the sole purpose of and solely to the extent necessary for creating publicly-available searchable indices of the materials, but not caches or archives of such materials;

• You will not take any action that imposes or may impose (in our sole discretion) an unreasonable or disproportionately large load on our technical infrastructure; and

• You will let us know about inappropriate Patient Generated Content of which you become aware.

We have the right, but not the obligation, to review and reject or remove content that, in our sole discretion, does not adhere to these Community Guidelines. We also reserve the right, in our sole and absolute discretion, to deny you access to the Services, or to any portion of the Services, without notice.

6. INTELLECTUAL PROPERTY

Pacira or its content providers expressly retain all right, title, and interest in and to the Services, all software and technology incorporated therein, all content made available by Pacira through the Services, and all Pacira trademarks and logos, trade dress, and other elements protected by state and federal laws used and displayed through the Services (collectively, the “Pacira IP”). Except as expressly set forth in this Agreement, you have no right in or to the Pacira IP. No other uses are permitted without our prior written consent. Unauthorized use of the Pacira IP may violate copyright, trademark, and other laws. You must retain all copyright and other proprietary notices contained in the original Pacira IP provided to you by Pacira. You may not: (i) decompose, decompile, reverse engineer, disassemble or otherwise deconstruct all or any portion of the Services; (ii) publish, broadcast, retransmit, reproduce, duplicate, copy, modify, repackage, frame, mirror, commercially exploit, create any derivative of, or otherwise redistribute or otherwise exploit all or any portion of the Services except as explicitly permitted in these Terms of Use; or (iii) remove any copyright, trademark or other proprietary notice or legend contained on (or printed from) the Services; or (iv) retrieve, index, scrape, harvest, data mine or otherwise systematically gather or store content.

7. PATIENT GENERATED CONTENT

Patients may post and/or create content through the Services, including but not limited to, answers to the questionnaires (collectively, the “Patient Generated Content”). We cannot and do not review it all—we are merely acting as a passive conduit for distribution of the Patient Generated Content to your Provider. That said, we may remove Patient Generated Content that violates the terms of this Agreement, or that is offensive or otherwise unacceptable to us in our sole discretion.

If you are a Patient, you expressly acknowledge and agree that once you submit your Patient Generated Content for inclusion into the Services, it is subject to the terms of the HIPAA Authorization. IF YOU ARE A PATIENT, YOU, AND NOT PACIRA, ARE ENTIRELY RESPONSIBLE FOR ALL YOUR PATIENT GENERATED CONTENT THAT YOU UPLOAD, POST, E-MAIL, OR OTHERWISE TRANSMIT VIA THE SERVICES.
You retain all copyrights and other intellectual property rights in and to the Patient Generated Content. You do, however, hereby grant us a non-exclusive, royalty-free, sublicensable, transferable, perpetual license to modify, compile, combine with other content, copy, record, synchronize, transmit, translate, format, distribute, publicly display, publicly perform, and otherwise use or exploit your Patient Generated Content as reasonably necessary to provide the Services.

If you submit Patient Generated Content to us, each such submission constitutes a representation and warranty to Pacira that such Patient Generated Content is your original creation (or that you otherwise have the right to provide the Patient Generated Content), that you have the rights necessary to grant the license to the Patient Generated Content under the prior paragraph, and that it and its use by Pacira and its content partners as permitted by this Agreement does not and will not infringe or misappropriate the intellectual property or moral rights of any person or contain any libelous, defamatory, or obscene material or content that violates the terms of this Agreement.

8. PROVIDER GENERATED CONTENT

Providers may post and/or create content through the Services, including but not limited to, questionnaires, surgery instructions, surgery information, and procedure information (collectively, the “Provider Generated Content”). We cannot and do not review it all—we are merely acting as a passive conduit for distribution of the Provider Generated Content to your Patients. That said, we may remove Provider Generated Content that violates the terms of this Agreement, or that is offensive or otherwise unacceptable to us in our sole discretion.

If you are a Provider, you expressly acknowledge and agree that once you submit your Provider Generated Content for inclusion into the Services, it is subject to the terms of the HIPAA Authorization. IF YOU ARE A PROVIDER, YOU, AND NOT PACIRA, ARE ENTIRELY RESPONSIBLE FOR ALL YOUR PROVIDER GENERATED CONTENT THAT YOU UPLOAD, POST, E-MAIL, OR OTHERWISE TRANSMIT VIA THE SERVICES.

You retain all copyrights and other intellectual property rights in and to the Provider Generated Content. You do, however, hereby grant us a non-exclusive, world-wide, royalty-free, sublicensable, irrevocable, transferable, perpetual license to modify, compile, combine with other content, copy, record, synchronize, transmit, translate, format, distribute, publicly display, publicly perform, and otherwise use or exploit your Provider Generated Content as reasonably necessary to provide the Services or for any other lawful business purpose.

If you submit Provider Generated Content to us, each such submission constitutes a representation and warranty to Pacira that such Provider Generated Content is your original creation (or that you otherwise have the right to provide the Patient Generated Content), that you have the rights necessary to grant the license to the Provider Generated Content under the prior paragraph, and that it and its use by Pacira and its content partners as permitted by this Agreement does not and will not infringe or misappropriate the intellectual property or moral rights of any person or contain any libelous, defamatory, or obscene material or content that violates the terms of this Agreement.

9. COMMUNICATIONS WITH US

Although we encourage you to e-mail us, we do not want you to, and you should not, e-mail us any content that contains confidential information. With respect to all e-mails and communications you send to us, including, but not limited to, feedback, questions, comments, suggestions, and the like, we shall be free to use any ideas, concepts, know-how, or techniques contained in your communications for any purpose.
whatever, including but not limited to, the development, production, and marketing of products and services that incorporate such information without compensation or attribution to you.

10. NO WARRANTIES AND LIMITATION OF LIABILITY

NONE OF PACIRA, ITS AFFILIATES, SUBSIDIARIES, OR ITS OR THEIR OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS (COLLECTIVELY THE “PACIRA PARTIES”) ENDORSE ANY CONTENT PROVIDED THROUGH THE SERVICES, ANY PATIENT, PROVIDER, PATIENT GENERATED CONTENT, PROVIDER GENERATED CONTENT, AND/OR ANY OPINION, RECOMMENDATION OR ADVICE EXPRESSED BY ANY PATIENT OR PROVIDER THROUGH THE SERVICES. YOU ACKNOWLEDGE THAT THE SERVICES MERELY ACT AS VENUES THAT ALLOW YOU TO COMMUNICATE WITH YOUR PROVIDER AND TRACK AND RECORD YOUR DAILY ACTIVITIES AND TREATMENT. NONE OF THE PACIRA PARTIES IS A PARTY TO, OR HAS ANY RESPONSIBILITY OR LIABILITY WITH RESPECT TO, ANY TRANSACTION, COMMUNICATION OR INTERACTION BETWEEN YOU AND YOUR PROVIDER OR PATIENT OR FOR ANY RESULTS CAUSED BY USING THE SERVICES, INCLUDING WITHOUT LIMITATION, ANY DEATH, BODILY INJURY OR HEALTH PROBLEMS YOU MAY SUFFER. FOR THE AVOIDANCE OF DOUBT, THE FOREGOING SENTENCE DOES NOT APPLY TO CONSUMERS LOCATED IN NEW JERSEY.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU ACKNOWLEDGE AND AGREE THAT THE SERVICES, INCLUDING, WITHOUT LIMITATION, ALL PACIRA IP, CONTENT, FUNCTIONS AND MATERIALS, IS PROVIDED "AS IS," "AS AVAILABLE", WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. THE SERVICES HAS NOT BEEN EVALUATED BY THE FOOD AND DRUG ADMINISTRATION OR ANY FOREIGN REGULATORY BODY. YOU AGREE THAT YOU MUST EVALUATE, AND THAT YOU BEAR ALL RISKS ASSOCIATED WITH, THE USE OF THE SERVICES, INCLUDING ANY RELIANCE ON THE ACCURACY, COMPLETENESS, AVAILABILITY OR USEFULNESS OF ANY CONTENT AVAILABLE THROUGH THE SERVICES.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN CONNECTION WITH ANY WARRANTY, CONTRACT, OR COMMON LAW TORT CLAIMS: (I) WE SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR DAMAGES RESULTING FROM LOST DATA OR BUSINESS INTERRUPTION ACCESS AND USE THE SERVICES OR THE CONTENT, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) ANY DIRECT DAMAGES THAT YOU MAY SUFFER AS A RESULT OF YOUR USE OF THE SERVICES OR THE CONTENT SHALL BE LIMITED TO ONE HUNDRED DOLLARS ($100).

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES. THEREFORE, SOME OF THE ABOVE LIMITATIONS ON WARRANTIES IN THIS SECTION MAY NOT APPLY TO YOU.

THE SERVICES MAY CONTAIN TECHNICAL INACCURACIES, TYPOGRAPHICAL ERRORS, OR OMISSIONS. WE ARE NOT RESPONSIBLE FOR ANY SUCH TYPOGRAPHICAL, TECHNICAL, PRICING, OR OTHER ERRORS LISTED ON OR OMITTED FROM THE SERVICES. WE RESERVE THE RIGHT TO MAKE CHANGES, CORRECTIONS, AND/OR IMPROVEMENTS TO THE SERVICES AT ANY TIME WITHOUT NOTICE.
11. EXTERNAL SITES

The Services may contain links to third-party websites (“External Sites”). These links are provided solely as a convenience to you and not as an endorsement by us of the content on such External Sites. The content of such External Sites is developed and provided by others. You should contact the site administrator or webmaster for those External Sites if you have any concerns regarding such links or any content located on such External Sites. We are not responsible for the content of any linked External Sites and do not make any representations regarding the content or accuracy of materials on such External Sites. You should take precautions when downloading files from all websites to protect your computer from viruses and other destructive programs. If you decide to access linked External Sites, you do so at your own risk.

12. INDEMNIFICATION

To the maximum extent permitted by law, you agree to defend, indemnify, and hold the Pacira Parties harmless from and against any claims, actions, or demands, including, without limitation, reasonable legal and accounting fees, arising or resulting from: (i) your breach of this Agreement; (ii) your misuse of the Services; (iii) any Patient Generated Content and/or Provider Generated Content provided through your account; (iv) your violation of any third-party right, including without limitation any intellectual property, or privacy right; or (v) any claims brought against any Pacira Party by a Provider, a Patient or any other third party as a result of any of your acts or omissions.

13. COMPLIANCE WITH APPLICABLE LAWS

The Services are based in the United States. Pacira makes no claims concerning whether the Services, the Pacira IP and/or the content provided through the Services may be viewed or be appropriate for use outside of the United States. If you access the Services, the Pacira IP and/or the content provided through the Services from outside of the United States, you do so at your own risk. Whether inside or outside of the United States, you are solely responsible for ensuring compliance with the laws of your specific jurisdiction.

14. TERMINATION

We may terminate this Agreement and your access to all or any part of the Services at any time and for any reason without prior notice or liability. We reserve the right to change, suspend, or discontinue all or any part of the Services at any time without prior notice or liability.

15. COPYRIGHT COMPLAINTS

If you believe the Services contains any content that infringes your copyright, please contact our Copyright Agent, as detailed below, with the following information:

- An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
- A description of the copyrighted work that you claim has been infringed;
- A description of where the material that you claim is infringing is located on the Services;
- Your address, telephone number and email address;
- A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent or the law; and
- A statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or duly authorized to act on the copyright owner’s behalf.
To contact our Copyright Agent by regular mail, please write to:

Pacira Pharmaceuticals, Inc.
Attn: Office of General Counsel, Copyright Agent
5 Sylvan Way
Parsippany NJ 07054

To contact our Copyright Agent by email, please write to Trackthat@pacira.com, with COPYRIGHT NOTICE in the subject line.

16. BINDING ARBITRATION

In the event of a dispute arising under or relating to this Agreement or the Services or any other products or services provided by us (each, a “Dispute”), either party may elect to finally and exclusively resolve the dispute by binding arbitration governed by the Federal Arbitration Act (“FAA”). Any election to arbitrate, at any time, shall be final and binding on the other party. IF EITHER PARTY Chooses ARBITRATION, NEITHER PARTY SHALL HAVE THE RIGHT TO LITIGATE SUCH CLAIM IN COURT OR TO HAVE A JURY TRIAL, EXCEPT EITHER PARTY MAY BRING ITS CLAIM IN ITS LOCAL SMALL CLAIMS COURT, IF PERMITTED BY THAT SMALL CLAIMS COURT RULES AND IF WITHIN SUCH COURT’S JURISDICTION. ARBITRATION IS DIFFERENT FROM COURT, AND DISCOVERY AND APPEAL RIGHTS MAY ALSO BE LIMITED IN ARBITRATION. All disputes will be resolved before a neutral arbitrator, whose decision will be final except for a limited right of appeal under the FAA. The arbitration shall be commenced and conducted by the Judicial Arbitration and Mediation Services (“JAMS”) pursuant to its then current Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those rules, or, where appropriate, pursuant to JAMS’ Streamlined Arbitration Rules and Procedures. All applicable JAMS’ rules and procedures are available at the JAMS website http://www.jamsadr.com. Each party will be responsible for paying any JAMS filing, administrative and arbitrator fees in accordance with JAMS rules. Judgment on the arbitrator’s award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The arbitration may be conducted in person, through the submission of documents, by phone, or online. If conducted in person, the arbitration shall take place in the United States county where you reside. The parties may litigate in court to compel arbitration, to stay a proceeding pending arbitration, or to confirm, modify, vacate or enter judgment on the award entered by the arbitrator. The parties shall cooperate in good faith in the voluntary and informal exchange of all non-privileged documents and other information (including electronically stored information) relevant to the Dispute immediately after commencement of the arbitration. Nothing in this Agreement will prevent Pacira from seeking injunctive relief in any court of competent jurisdiction as necessary to protect Pacira’s proprietary interests.

17. CLASS ACTION WAIVER

You agree that any arbitration or proceeding shall be limited to the Dispute between us and you individually. To the full extent permitted by law, (i) no arbitration or proceeding shall be joined with any other; (ii) there is no right or authority for any Dispute to be arbitrated or resolved on a class action-basis or to utilize class action procedures; and (iii) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons. YOU AGREE THAT YOU MAY BRING CLAIMS AGAINST US ONLY IN YOUR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.
18. MISCELLANEOUS

If this Agreement is terminated in accordance with the Termination provision above, such termination shall not affect the validity of the following provisions of this Agreement, which shall remain in full force and effect: “Disclaimer,” “Intellectual Property,” “Communications with Us,” “No Warranties and Limitation of Liability,” “Indemnification,” “Termination,” “Binding Arbitration,” “Class Action Waiver,” and “Miscellaneous.”

This Agreement and any action related thereto will be governed by the laws of the State of New Jersey without regard to its conflict of laws provisions. Our failure to act on or enforce any provision of the Agreement shall not be construed as a waiver of that provision or any other provision in this Agreement. No waiver shall be effective against us unless made in writing, and no such waiver shall be construed as a waiver in any other or subsequent instance. Except as expressly agreed by us and you in writing, this Agreement constitutes the entire Agreement between you and us with respect to the subject matter, and supersedes all previous or contemporaneous agreements, whether written or oral, between the parties with respect to the subject matter. The section headings are provided merely for convenience and shall not be given any legal import. This Agreement will inure to the benefit of our successors, assigns, licensees, and sublicensees.

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