

## PACE INSITE™ TERMS & CONDITIONS OF USE

### 1. DEFINITIONS.

1.1 "Database" means a database maintained by Pace and/or its designee that Company may access to retrieve copies of its Service Reports (defined below) and other information on the status and functioning of the Equipment (defined below) and levels of Pace Products (defined below) in use.

1.2 "Equipment" means packing line equipment used at a Company's facility.

1.3 "Pace Products" means Pace's line of postharvest cleaners, sanitizers, coatings, and fungicides.

1.4 "Services" means the reporting and database services described in **Schedule 1**.

1.5 "Service Reports" means reports generated by Pace that summarize actions taken by Pace technicians and provide the status and functioning of the Equipment and levels of Pace Products in use.

2. SERVICES. In consideration of Company's use of the Pace Products in association with its Equipment, and subject to these terms and conditions, Pace grants to Company a limited, non-exclusive, non-transferable, non-sublicense-able license to use the Services.

### 3. TERM.

3.1 Suspension or Termination for Cause. Pace may suspend the Services if Company is delinquent in payment of any invoices due for the Pace Products.

3.2 Effects of Termination. Upon termination, (a) the rights granted to Company by Pace will cease immediately; and (b) Pace will work with Company in good faith to enable Company to receive copies of all Service Reports and information residing in the Database. These materials will be transmitted by Pace to Company in a mutually agreed format. Pace is unable to delete Service Reports and any information inputted into the Database, even after termination.

### 4. PROPRIETARY RIGHTS.

4.1 Ownership. Subject to the limited right to use the Services during the Term, Pace and its licensors reserve all of right, title, and interest in and to the Services, including all related intellectual property rights, derivative works thereof, and anything developed and delivered by Pace. Pace owns all Service Reports. No rights are granted to Company other than as expressly set out herein. Upon termination of Pace's Services, Company's right to access or use the Services shall terminate.

4.2 No Delivery Obligation. Company acknowledges that Pace has no delivery obligation and will not provide any copies of software used to deliver the Services to Company as part of the Services.

4.3 Feedback. To the extent that Company provides Pace any suggestions, comments or other feedback regarding the Services, including problems or errors encountered in using the Services, or ideas for enhancements of the Services (collectively, "**Feedback**"), Company hereby assigns and agrees to assign to Pace all right, title and interest in and to all such Feedback, and all enhancements resulting from such Feedback, and all property rights therein or related thereto, including any and all patent, copyright, trade secret, trademark, and other intellectual property rights.

4.4 Restrictions. Company may not, and may not cause or permit others to:

4.4.1 Remove or modify any program or Services markings or any notice of Pace's or its licensors' proprietary rights;

4.4.2 Make the Services, including any software or materials to which Company is provided access, available in any manner to any third party without Pace's prior written consent;

4.4.3 Modify, make derivative works of, disassemble, reverse compile, reverse engineer, reproduce, distribute, republish or download any part of the Services, or access or use the Services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to Pace;

4.4.4 Use the Services in a manner that could be considered fraudulent or in violation of any law of regulation, or introduce any malicious code into the Services;

4.4.5 Cause or attempt to cause a denial of service or a service availability failure, or access or attempt to access data that does not belong to Company;

4.4.6 Disclose results of any evaluation of the Services by or on behalf of the Company for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes without Pace's prior written consent;

4.4.7 Perform or disclose any of the following security testing of the serviced environment or associated infrastructure: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing; or

4.4.8 License, sublicense, sell, rent, lease, transfer, assign, distribute, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the Services, software, or materials available to any third party.

5. CONFIDENTIALITY AND NON-DISCLOSURE. Company acknowledges that the Services embody valuable, confidential, and secret information of Pace and its licensors, the development of which required the expenditure of considerable time and money. Company shall protect as Confidential Information and shall not, without the prior written consent of Pace, use (except as expressly permitted herein) or disclose to any other person or third party, any part of the Services or any other information that Company receives or learns of in its activities hereunder relating to Pace's technology, services, or the Services. Confidential Information shall not include any information that (a) is or becomes generally known to the public without breach of obligation; (b) was known to the receiving party prior to disclosure by the receiving party; (c) is received from a third party without breach of obligation; or (iv) was independently developed by the receiving party.

## 6. DISCLAIMERS AND EXCLUSION OF WARRANTIES.

6.1 ALL SERVICES ARE PROVIDED TO COMPANY ON AN "AS-IS" AND "AS AVAILABLE" BASIS, AND PACE HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED REPRESENTATIONS, CONDITIONS, WARRANTIES OR OTHER TERMS OF ANY KIND IN RESPECT OF THE SERVICES, AND ALL STATUTORY WARRANTIES AND CONDITIONS ARE EXCLUDED TO THE FULLEST EXTENT POSSIBLE.

6.2 PACE DOES NOT GUARANTEE THAT (A) THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT PACE WILL CORRECT ALL ERRORS IN THE SERVICES; (B) THE SERVICES WILL OPERATE IN COMBINATION WITH COMPANY'S CONTENT OR APPLICATIONS, OR WITH ANY OTHER SOFTWARE, HARDWARE, SYSTEMS, OR DATA; (C) COMPANY CONTENT AND DATA WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED; AND (D) THE SERVICES, INCLUDING ANY PRODUCTS, INFORMATION OR OTHER MATERIAL COMPANY OBTAINS OR PURCHASES FROM PACE WILL MEET COMPANY'S REQUIREMENTS OR EXPECTATIONS.

6.3 COMPANY ACKNOWLEDGES THAT PACE DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. PACE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

6.4 COMPANY IS SOLELY RESPONSIBLE FOR ANY CONTENT THAT COMPANY LOADS INTO OR CREATES WITHIN THE SERVICES, AND AGREES, AT COMPANY'S SOLE COST AND EXPENSE, TO DEFEND PACE AGAINST ANY CLAIM AND INDEMNIFY PACE FROM ANY DAMAGES, LIABILITIES, COSTS AND EXPENSES OR THE SETTLEMENT AGREED TO BY COMPANY, ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY SUCH CONTENT. PACE IS NOT RESPONSIBLE FOR THE SECURITY OF ANY CONTENT THAT COMPANY LOADS INTO OR CREATES WITHIN THE SERVICES ENVIRONMENT.

6.5 PACE RESERVES THE RIGHT TO MAKE CHANGES OR UPDATES TO THE SERVICES AT ANY TIME WITHOUT NOTICE.

7. LIMITATION OF LIABILITY. IN NO EVENT WILL PACE BE LIABLE TO COMPANY OR TO ANY THIRD PARTY FOR LOST PROFITS OR LOSS OF BUSINESS OR FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, HOWEVER CAUSED, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT PACE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PACE'S LIABILITY WILL NOT EXCEED ONE THOUSAND UNITED STATES DOLLARS (\$1,000.00). COMPANY AGREES THAT SUCH LIMITATION IS FAIR AND REASONABLE IN LIGHT OF THE TERMS UNDER WHICH THE SERVICES ARE BEING MADE AVAILABLE TO COMPANY.

8. INDEMNITY. Company agrees to defend, indemnify, and hold harmless Pace and its licensors, officers, employees, technology partners, affiliates and agents from and against any third-party suit, proceeding, assertion, damages, cost,

liability, penalties, fines and expenses (including court costs and reasonable attorneys' fees) arising from or related to Company's use or misuse of the Services.

9. MISCELLANEOUS.

9.1 INDEPENDENT CONTRACTORS. The parties are independent contractors, and nothing shall be deemed or construed to create, or have been intended to create a partnership, joint venture, employment, or agency relationship between the parties. Each party agrees that it neither has nor will give the appearance or impression of possessing the legal authority to bind or commit the other party in any way.

9.2 ASSIGNMENT. Company may not give or transfer the Services or an interest in them to another individual or entity.

9.3 NOTICES. All notices between the parties shall be in writing and shall be deemed to have been given if personally delivered or sent by certified mail (return receipt requested), courier, or electronic mail, to the other party's current or last known address. Notices shall be deemed effective upon receipt if personally delivered, three (3) business days after it was sent if by certified mail, or one (1) business days after it was sent if by electronic mail or courier.

9.4 GOVERNING LAW; VENUE. The parties agree that, except to the extent governed by United States federal law, these Terms and Conditions shall be governed by the laws of the State of Washington, United States of America, exclusive of any choice of law and conflict of law rules, provided that no state or federal United States franchise law or regulation shall apply. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms and Conditions or the transactions described herein. All legal proceedings relating to or arising out of these Terms and Conditions must be brought in the state or federal courts sitting in Seattle, Washington.

9.5 WAIVER. Any failure of a party to enforce any of the provisions of these Terms and Conditions will not be construed as a waiver of such provisions or of the right of said party to enforce these Terms and Conditions.

9.6 FORCE MAJEURE. No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of these Terms and Conditions to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, public health emergencies, or other causes beyond the performing party's reasonable control, whether similar or dissimilar to any of the foregoing.

**SCHEDULE 1**

Services

Pace may offer some or all of the below Services to Company:

- Provide digital Service Reports. Company is responsible for providing Pace with its preferred method of receiving the Service Reports.
- Provide a Database maintained by Pace and/or its designee that Company may access to retrieve copies of its Service Reports and other information on the status and functioning of the Equipment and levels of Pace Products in use.
- Provide training on how to use and operate Pace InSite.
- Provide a digital copy of the User Manual.
- Allow Company to make its own entries in the Database after completing additional training.