

## **Pingboard Terms of Service**

August 4, 2020

These Terms of Service together with any Service Order and any addenda to either of them (collectively the “**Agreement**”) are a contract that governs your access to Pingboard’s online org chart and employee directory software, mobile apps, and application programming interfaces (collectively the “**Service**”). The Agreement is effective as of the date that you sign up for any Service online or submit a Service Order that references these Terms of Service (the “**Effective Date**”).

- The terms “**Pingboard**,” “**we**,” and “**our**” refer to Pingboard, Inc.
- The terms “**Subscriber**,” “**you**,” and “**your**” refer to the individual or legal entity that signs up for the Service online or submits a Service Order.
- The term “**us**” refers to both you and Pingboard.
- A “**Service Order**” is a form prepared by Pingboard for you to sign or submit that describes the features, fees and other details of the Service you are buying.

If the person who is the Subscriber is a legal entity (such as a corporation, limited liability company, or partnership) the individual who signs up online or submits a Service Order on behalf of the Subscriber represents to Pingboard that he or she has the authority to enter into the Agreement on behalf of the Subscriber.

## **1. Your Users**

You are responsible for managing and administering user accounts for your personnel (“**Users**”), including granting and revoking access. You are solely responsible for ensuring your Users’ use of the Service is in compliance with this Agreement and all applicable laws. You acknowledge that Pingboard is not responsible to you for you or your Users’ failure to use good password security, or for any violation by your Users of your employment agreements, employee handbooks, or other internal policies.

## **2. Your Content**

Subscriber and Users may input or upload text, images, videos, files, links, works of authorship, materials, comments, status updates, location information and other content (“**Content**”). We do not claim ownership of the Content. By posting or sharing Content, Subscriber and Users grant to Pingboard only the limited rights in the Content that are reasonably necessary for Pingboard to provide the Service. During the Term of this Agreement you will have the ability, in a manner consistent with the functionality of the Services, to access, download, modify, and delete your Content. If you delete any User, you will no longer be able to access the Content for that User. Upon termination of this

Agreement, you will no longer have access to your Content, and we will permanently delete your Content from the production systems within 90 days, or sooner upon request. To the extent the Content has been archived to backup systems, that archived copy will be destroyed in accordance with Pingboard's standard backup destruction policies. Your Content does not include aggregate anonymous data or system generated data about your use of the Services, such as user behavior or resource utilization, so long as no personal data is included.

### **3. Personal Data Processing**

- A. **Privacy Policy.** The [Pingboard Privacy Policy](#) describes the personal data that we collect from you as a Subscriber, and how we use and disclose that personal data. By entering into the Agreement, you agree to our collection and use of personal data as described in our Privacy Policy.
- B. **Personal Data as Content.** This Agreement governs our processing of personal data that is part of your Content and constitutes your instructions to Pingboard to process the personal data as necessary to provide the Services or as otherwise authorized or permitted by this Agreement or applicable law. You agree that we may transfer and process your personal data in the United States and locations other than Subscriber's or a User's country. We will inform you of any legal requirement that prevents Pingboard from complying with your instructions, unless prohibited from doing so by applicable law or on important grounds of public interest.
- C. **Data Protection Laws.** To the extent that Pingboard is, on behalf of Subscriber, processing personal data that is subject to the California Consumer Privacy Act of 2018 or the EU General Data Protection Regulation 2016/679 (GDPR) or like legislation of the United Kingdom, Switzerland, or any European country that is a member of the European Economic Area (the "Data Protection Laws"), you must sign up for a Paid Plan and agree to the Pingboard Data Processing Addendum by signing it using this link: <https://app.hellosign.com/s/cd69c37d>

If you do not agree to and sign the Data Processing Addendum or choose to use a Free Plan, you represent that processing of your Content by Pingboard is not subject to Data Protection Laws. Subscriber will not take any action that would cause Pingboard to violate Data Protection Laws.

The term "personal data" means any information relating to an identified or identifiable natural person. The terms, "process," and "processing" means any operation or set of operations which is performed on personal data, such as collection, storage, transmission, and any other operation that is considered processing under applicable law, including the Data Protection Laws.

- D. **User Consent.** Subscriber will obtain and maintain from its Users or other data subjects whose personal data is part of the Content any consents necessary to allow Subscriber to engage in the activities described in this Agreement and to allow Pingboard to provide the Services.

#### 4. Confidentiality

We will not disclose your Content to any third party except as follows:

- A. To the third parties we work with to provide the Services (e.g. hosting companies) or who provide support for our internal operations; provided that such third parties (i) are subject to confidentiality terms at least as restrictive as those in this Agreement, and (ii) are permitted to use the Content for the sole purpose of providing services to Pingboard and not for any other purpose or use;
- B. To third parties that you elect to interact with using an integration feature provided by Pingboard as part of the Service;
- C. As required by law or in response to a subpoena or other compulsory legal process, provided that Pingboard will make commercially reasonable efforts to promptly notify you of the requirement, unless the law forbids such notice. Pingboard will comply, at your expense, with your prompt and commercially reasonable requests regarding your efforts to oppose disclosure under this subsection;
- D. To protect and defend the rights or property of Pingboard or its agents, technology vendors or contractors; or act in urgent circumstances to protect the personal safety of Users of the Service or the public.

#### 5. Security

- A. **Pingboard Security.** We maintain physical, electronic, and procedural safeguards designed to protect your Content. Our security practices are constantly evolving as security threats change. However, for the Term of this Agreement our security practices will be at least as stringent as described in the Pingboard Security Brief available at: [Pingboard Security](#) on the Effective Date). Despite the safeguards,

Subscriber acknowledges that no data transmission over the Internet or online processing environment is 100% secure.

- B. **Subscriber Security.** You must use reasonable security precautions in connection with your use of the Services, including protecting the confidentiality of User passwords.

## 6. Maintenance, Downtime

The Service may be temporarily unavailable for maintenance. We schedule maintenance between Saturdays 12:00 am US Central Time and Sunday 12:00 pm US Central Time ("**Maintenance Window**"), although we do not use each Maintenance Window and occasionally must schedule maintenance or perform emergency maintenance outside of the Maintenance Window. If we anticipate Service unavailability in excess of sixty (60) minutes we will use reasonable efforts to notify you at least forty-eight (48) hours in advance. You acknowledge that outages and downtime may occur. If you are not satisfied with the Service availability or performance, you may terminate this agreement at any time and as your **sole and exclusive remedy** for Service availability or performance receive a refund of prepaid fees for unused Services.

## 7. Free and Paid Plans

- A. **Free Plan.** We may offer certain parts of the Service at no charge, either generally or during a trial period ("**Free Plan**"). The Warranty and Indemnification sections of these Terms do not apply to a Free Plan. Subscriber agrees that all use of the Service while on a Free Plan is at Subscriber's sole risk **and Pingboard has no liability to you whatsoever for damages you may suffer as a result of your use of a Free Plan.** Pingboard reserves the right to terminate any Free Plan at any time.
- B. **Paid Plan.** You can upgrade to increase the number of Users beyond the limits of the Free Plan or add additional paid features (converting you to a "**Paid Plan**"). When you do, you will be required to provide a credit card or other payment information and we will bill you on the date you convert ("**Paid Plan Effective Date**") and we will continue billing you based on the billing plan you selected.
- C. **Monthly Plan.** Monthly billing Paid Plans will renew on a month-to-month basis until you cancel or downgrade to a Free Plan, or Pingboard gives a notice of cancellation as described below.

**Cancel Anytime.** You may cancel a monthly billing Paid Plan, change plans, or downgrade from a monthly billing Paid Plan to a Free Plan, if available, via the self-serve options or by giving notice through the help or billing section of the Service. The change will be effective at the end of the monthly billing period in which you give your notice.

D. **Annual Plan.** Annual billing Paid Plans will renew on a year-to-year basis until you cancel or change to a monthly plan, or Pingboard gives a notice of cancellation as described below. Pingboard will give you notice of each upcoming annual renewal within a reasonable period of time prior to the renewal date.

- a. **Money Back Guarantee.** If you cancel your annual billing Paid Plan, or downgrade to a monthly billing Paid Plan or Free Plan for any reason during the first 30 days after the annual billing Paid Plan Effective Date, and you request a refund within 30 days of the downgrade or cancellation, we will refund the full amount paid for the annual billing Paid Plan ("**30 Day Money Back Guarantee**"); provided however that this refund is available to you only once, the first time you downgrade or cancel an annual billing Paid Plan.
- b. After the 30 Day Money Back Guarantee period, you may cancel an annual billing Paid Plan or change from an annual billing Paid Plan to a monthly billing Paid Plan or Free Plan by giving notice of the change through the help or billing section of the Service. If you give the notice at least 30 days prior to the end of that annual billing period the change will be effective at the end of the annual billing period in which you give your notice. If you give the notice less than 30 days prior to the end of the annual billing period, the change will not be effective until the end of the next annual billing period.

E. **Fees and Payment.** The applicable pricing and payment schedule for the Service ("**Fees**") are listed at [Pingboard Pricing](#) (unless you enter into a separate Service Order or other written agreement with Pingboard). Fees are non-refundable except as expressly stated in other parts of the Agreement. Unless we agree otherwise in a Service Order or other written agreement, all Fees are due and payable in advance (either monthly, yearly or other period depending on the selected plan), in U.S. dollars.

The fees do not include sales, excise, use, VAT, or similar taxes ("**Sales Tax**"). Subscriber represents to Pingboard that its address for Sales Tax purposes is the address appearing on the billing section of the service or on the Order or a different address that Customer has certified as the correct address in a written statement provided to Pingboard. Subscriber shall pay Pingboard's invoices for applicable Sales Tax on the payment terms applicable to the Fees, or shall provide evidence of a Sales Tax exemption or direct payment in a form reasonably acceptable to Pingboard. Subscriber acknowledges that the laws applicable to Sales Tax for online services such as Pingboard are evolving and are subject to different interpretations. Subscriber agrees that Pingboard's reasonable interpretation of the laws applicable to Sales Tax shall control.

If Subscriber does not pay Fees on time, we may (at our option and in addition to other remedies) (i) charge a late fee on the unpaid balance at the lesser of one and one-half percent (1.5%) per month or the maximum lawful rate permitted by applicable law, rounded to the next highest whole month and compounded monthly, (ii) if unpaid for more than 10 days we may suspend your and your Users' access to the Service, and (iii) if unpaid for more than 30 days we may permanently delete your account, your Users' accounts and associated Content.

- F. **Cancelation and Changes by Pingboard.** Pingboard may cancel a Paid Plan by giving at least 60 days advance written notice prior to the billing period renewal date. Pingboard may change the Fees on a Paid Plan by giving at least 60 days advance written notice prior to the billing period renewal date, during which time you can choose to cancel your Service. If you do not cancel, the fee increase is effective at the end of the sixty (60) days.

## 8. Beta Services

We may sometimes offer access to new products and features that we are still developing and testing ("**Beta Services**"), and when we do we'd love to hear your feedback. Beta Services will be marked "beta," "preview," "pre-release," "early access" or with a similar designation. The Beta Services may not be fully tested, may have defects, and are provided **AS IS**. Pingboard may decide not to release the Beta Service into the Service.

## **9. Term and Termination**

The term of this Agreement (the “**Term**”) begins on the Effective Date and continues for so long as there is a Free Plan or Paid Plan in effect as described in Section 7, or one of us terminates the Agreement as permitted in another section of the Agreement.

Subscriber’s and its Users’ right to use or access the Service will terminate automatically upon notice from Pingboard if Subscriber fails to comply with any terms of this Agreement. Upon termination of the Agreement, all rights granted to Subscriber and its Users under this Agreement will cease. The following sections will survive expiration or termination of this Agreement: 4 (Confidentiality), 7(5e) (Fees and Payment), 9 (Term and Termination), 11 (Compliance with Law), 15 (Indemnification), 15 (Disclaimers and Limitations of Liability), 16 (Intellectual Property Rights), 17 (Disputes) and 18 (Miscellaneous).

## **10. Restrictions on Using the Service**

- A. It is Pingboard’s policy to refuse service to organizations that engage in or promote hateful conduct, such as attacks or threats targeting race, sex, sexual orientation, gender identity, age, religious affiliation, social status, disease, and other personal attributes, particularly when the conduct targets groups who have been historically marginalized.
- B. Subscriber and its Users may not do any of the following: (i) rent, lease, lend, sell, redistribute reproduce, or sublicense the Service, or (ii) use the Service in any manner that threatens the security of the Service or negatively impacts the Service for other Pingboard subscribers.
- C. Users may not submit any Content that is malicious, defamatory, obscene, pornographic, abusive or threatening, or that promotes illegal or immoral activities. It is important to Pingboard that Users do not use the Service to infringe the rights of others. Subscriber represents to Pingboard that, to its knowledge (i) Users have the right to share Content via the Service, and (ii) the posting and sharing of Content does not violate the privacy rights, publicity rights, copyrights, trademark rights, contract rights or any other rights of any person or entity.
- D. The Service is not intended for Users under the age of 16. Subscriber will ensure that it does not allow any person under 16 to use the Service. Subscriber will promptly notify Pingboard if Subscriber becomes aware of any unauthorized use of or access to the Service.



- E. You and your Users are licensed to use our mobile app on a non-exclusive, non-transferable basis only for the Term of the Agreement.

We reserve the right to terminate or suspend a User's access to the Service or remove any of the Content from the Service, for any reason in our sole discretion, including violations of this section.

## **11. Compliance with Law**

Each party must comply with all laws and regulations applicable to its provision, or use, of the Service, as applicable. Notwithstanding the foregoing, if complying with privacy laws would materially change Pingboard's costs or risks in providing the Service (including, without limitation, by requiring that any Pingboard data centers be located outside the U.S., or requiring Pingboard to operate in violation of any laws), each party will have the right to terminate this Agreement upon at least thirty (30) days prior written notice to the other party, unless the parties agree in writing to an alternative solution. In the event of such a termination, Subscriber's sole right and Pingboard's sole obligation will be for Pingboard to refund prepaid fees for unused Services.

## **12. Warranty**

If Subscriber is on a Paid Plan, Pingboard provides the following warranties: (a) for the Term of Agreement the Services will perform in accordance with the then-current Service descriptions provided on the Pingboard website and help documentation, and (b) the Service will not cause any viruses, worms, time bombs, Trojan horses or other harmful, malicious or destructive code to be installed or introduced on Subscriber's computer, telecommunication or other information systems. As Subscriber's **sole and exclusive remedy** for a breach of the foregoing warranties, Pingboard will repair or replace the affected portion of the Service so that it conforms to the warranties. In the event Pingboard is not able to cure any breach of the warranty within fifteen (15) days of written notice thereof from Subscriber, Subscriber will at its option have the right to (i) terminate this Agreement and receive a refund of prepaid fees for unused Services, (ii) extend the time Pingboard has to cure the defect, or (iii) continue to use the Service without the defect cured. The foregoing warranties do not apply to Beta Services.

### 13. Integrations

The Service includes features that enable you to import your Content from third party services, such as ADP and Active Directory. Pingboard does not endorse any service for which it offers an integration feature, and makes no commitment to you regarding those services. You acknowledge that Pingboard's integration features may be unavailable or may not work properly if the service provider's API is unavailable or if the service provider modifies its API or services in a way that impacts the Pingboard integration feature. Pingboard will attempt to modify its integration features to maintain compatibility with service provider's APIs and services. If we are not able to maintain compatibility through the use of commercially reasonable efforts, we may discontinue support for the integration you may cancel and receive a refund of prepaid fees for unused Services.

### 14. Indemnification

- A. **By Pingboard.** If Subscriber is on a Paid Plan, Pingboard will indemnify, defend, and hold harmless Subscriber from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of any claim by a third party against Subscriber to the extent based on an allegation that Pingboard's technology used to provide the Service to the Subscriber infringes or misappropriates any copyright, trade secret, U.S. patent, or trademark right of the third party. In no event will Pingboard have any obligations or liability under this section arising from: (i) use of Service in a modified form or in combination with materials not provided by Pingboard or (ii) any Content provided by Subscriber, Users, or other third parties.
- B. **By Subscriber.** Subscriber will indemnify, defend, and hold harmless Pingboard from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of any claim by a third party against Pingboard and its affiliates regarding: (i) Subscriber's or Users' Content, including any claim that the Content infringes or misappropriates any third party intellectual property right, or (ii) Subscriber's or Users' use of the Service in violation of this Agreement.
- C. **Possible Infringement.** If Pingboard believes the Service infringes or may be alleged to infringe a third party's intellectual property rights, then Pingboard may: (i) obtain the right for Subscriber, at Pingboard's expense, to continue using the Service; (ii) provide a non-infringing functionally equivalent replacement; or (iii) modify the Service so that they no longer infringe. If Pingboard does not believe

the options described in this section are commercially reasonable then Pingboard may suspend or terminate Subscriber's use of the affected Service and refund prepaid fees for unused Services.

- D. **General.** The party seeking indemnification will promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnifying party will have full control and authority over the defense, except that: (i) any settlement requiring the party seeking indemnification to admit liability requires prior written consent, not to be unreasonably withheld or delayed and (ii) the other party may join in the defense with its own counsel at its own expense. THIS SECTION 14 CONTAINS PINGBOARD'S AND SUBSCRIBER'S ENTIRE LIABILITY, AND SOLE AND EXCLUSIVE REMEDY, FOR ANY VIOLATION BY THE OTHER PARTY OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

## 15. Disclaimers and Limitations of Liability

This section limits Pingboard's liability and the liability of its affiliates to Subscriber. Some jurisdictions do not allow disclaimers of implied warranties or limitations of liability, so this Section may not apply.

- A. **Disclaimer of Warranties.** Except as otherwise provided in this Agreement, the Service, is provided "**as is**" and "**as available**," without additional warranty of any kind, **and we hereby disclaim all other warranties and conditions, express, implied, or statutory, including without limitation any implied warranties of non-infringement, merchantability or fitness for a particular purpose.** Pingboard does not warrant that the Service will meet all of Subscriber's requirements or that the use of the Service will be uninterrupted, completely secure, or error free.
- B. **Limitation of liability.** In no event, except for Pingboard and Subscriber's indemnity obligations and excluding grossly negligent and intentional acts, shall either party be liable to the other for any indirect, punitive, special, exemplary, incidental, or consequential damages, or for any damages for loss of data, revenue, profits, use or other economic advantage, arising out of, or in any way connected with this Agreement or any matter beyond our reasonable control, including but not limited to the use or inability to use the Service, regardless of legal theory, even if the party from which damages are being sought have been previously advised of the possibility of such damages and even if the stated remedy fails of its essential purpose. To the fullest extent permitted by law, Pingboard's aggregate liability under or in connection with this Agreement and its

addenda will not exceed the lesser of \$50,000 or the amount paid by Subscriber for the Service during the twelve months prior to the event giving rise to liability; or \$500 if no fees have been paid by Subscriber. The provisions of this section allocate the risks under this Agreement, and both parties have relied on these limitations in determining whether to enter into this Agreement.

## **16. Intellectual Property Rights**

You may not use or access the Service for the purpose of developing a competing solution, but this Agreement does not otherwise restrict either party's development of its technology or products, even in areas where the parties' technology or products may be similar. You may not copy, decompile, reverse-engineer, disassemble, or attempt to derive the source code of the Service except to the extent permitted by applicable law notwithstanding this limitation, or modify or create derivative works of any part of the Service.

We reserve all rights in and to the Service and all related intellectual property not expressly granted under this Agreement. We may, at our discretion and for any purpose, use, modify, and incorporate into our products and services, license and sublicense, any feedback, comments, or suggestions Subscriber or Users send to Pingboard or post in Pingboard user forums without any obligation to Subscriber.

"PINGBOARD" and all associated logos displayed within the Service are our trademarks (unless otherwise noted). During the Term, either party may include the name and logo of the other party in its public lists of customers or vendors, unless either party provides written notice to the other party that it does not consent to such use. Any use of a party's name, logo or trademarks will be in accordance with the other party's standard trademark usage guidelines and each party will comply with other party's ongoing supervision as to the use of the other party's marks. Subscriber will also reasonably consider serving as a reference for Pingboard.

## **17. Disputes**

Before filing a claim, each party agrees to try to resolve the dispute by contacting the other party through the notice procedures in this Agreement. If a dispute is not resolved within 30 days of notice, Subscriber or Pingboard may bring a formal proceeding.

Subscriber and Pingboard agree to resolve any claims relating to this Agreement or the Service through final and binding arbitration. The American Arbitration Association (AAA) will administer the arbitration under its Commercial Arbitration Rules. The arbitration will be held in Austin, TX, or any other location both parties agree to in writing.

The requirements of this Section do not apply to Pingboard if it is seeking injunctive relief to stop unauthorized use or abuse of the Service or infringement of Intellectual Property Rights. The exclusive jurisdiction and venue of any action arising out of or related to such an action will be either the state or federal courts in Travis County, Texas, and the parties agree not to dispute the personal and exclusive jurisdiction or venue of these courts.

## **18. Miscellaneous**

- A. **Assignment.** Neither party may transfer or assign this Agreement or any of its rights or obligations without the prior written consent of the other party; provided, however, that either party may assign this agreement without such consent in connection with a merger, sale of assets, reorganization or similar transaction.
- B. **Changes to the Agreement.** We may need to change the terms of this Agreement in the future. Any change will take effect when we notify Subscriber of the change (either through an email notice or a message delivered through the Service) and Subscriber accepts the change (via email or an electronic click-to-accept method).
- C. **Governing Law.** The laws of the State of Texas, excluding its conflicts of law rules, govern this Agreement.
- D. **Entire Agreement.** This Agreement is the entire agreement between Pingboard and Subscriber regarding the Service and supersedes and replaces any prior agreement, understanding or communication, written or oral.
- E. **Waiver.** Our failure to exercise or enforce any right will not operate as a waiver of such right.
- F. **Severability.** If any provision of this Agreement is unlawful, void or unenforceable, that provision is deemed severable from this Agreement and does not affect the validity and enforceability of any remaining provisions.
- G. **Relationship Between the Parties.** The parties are independent contractors and the Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. There is no obligation of exclusivity - either party may purchase or sell services of the type covered by this Agreement to or from any person, including a competitor of the other party.

- H. **Notice.** Notices to Subscriber may be sent via first class mail or overnight courier and are deemed given when received, and may also be sent to the individual(s) Subscriber designates as your contact(s) or administrator(s) of the Service and are deemed given when sent. Notices to Pingboard may be sent via email to legalnotice@pingboard.com or by first class, airmail, or overnight courier to Pingboard, Inc. at its business address published on its Website, with a copy to the Legal Department, and are deemed given when received.
- I. **Force Majeure.** Neither party will be in default for failing to perform any obligation, other than payment of monies, if the failure is caused acts of God, acts of war, terrorism, labor disputes, governmental demands or restrictions, failure of third party networking equipment, failure of the public internet or changes in the accessibility of third party websites or similar acts beyond a party's control.
- J. **Export Restrictions.** Subscriber may not export or re-export the Service or elements of it, except as authorized by United States law and the laws of the jurisdiction in which the Service was accessed or obtained. You represent and warrant that: (i) neither you or any of your Users is a person to whom provision of the Services is prohibited by applicable export law; (ii) you will not cause the export, re-export or transfer of the Services (directly or via a "deemed export") to: (a) a jurisdiction subject to a U.S. trade embargo or comprehensive sanctions, or (b) a person who will use it to support the design, development, production, or use of nuclear materials, nuclear facilities, nuclear weapons, missiles or chemical or biological weapons or other activities subject to non-proliferation regulations.
- K. **Government Users.** The Service and related documentation are "Commercial Items," as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items, and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.
- L. **Mechanics.** Section titles are for convenience only and have no legal or contractual effect. This Agreement operates to the fullest extent permissible by law.

