

## Introduction

These terms and conditions, the Service Level Agreement, Acceptable Use Policy, Moderation Policy and the Privacy Policy constitute the entire Agreement between You and Social Pinpoint and governs Your use of Our Services. By registering for, accessing and/or otherwise using Social Pinpoint's services, You acknowledge that you have read, understood, and agree to be bound by these terms. If You can't agree to our terms, then you cannot use Our Services.

If you still have questions after you've read these terms, please get in touch with us.

## Terms and General

In these terms and conditions, capitalized words have the following meanings:

- 1. Acceptable Use Policy** – Means Our policy governing the acceptable use of Our Services published on Our website which may be varied from time to time.
- 2. Agreement** – Means these terms and conditions together with the Customer Registration, the Service Level Agreement, and the Privacy Policy.
- 3. Application** – Means the computer software application, more specifically called 'Social Pinpoint' and its associated products and plug-ins which is to be made available by Us to You pursuant to this Agreement.
- 4. Authorized User** – Means a user permitted to access Your Social Pinpoint instance under this Agreement.
- 5. Fees**– Means the fees for Our Services as specified in the Customer Registration or as notified by Us in accordance with this Agreement.
- 6. Social Pinpoint** – When We say Social Pinpoint, We, Our or Us, we're talking about Social Pinpoint Software Inc and its subsidiaries. Where context permits or requires, we are also talking about the Application which is known as 'Social Pinpoint'.
- 7. Content** – Means any Data and information available through Our Services or contained within Our Services.

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**8. Customer Registration** – Means the form described as such, or any other document completed upon signing up with Social Pinpoint that outlines a description of Our Services including contract dates and agreed pricing.

**9. Data** – Means data owned or supplied by You to which We are provided access pursuant to the Agreement or data which may otherwise be generated, compiled, arranged or developed using Social Pinpoint by You but excluding the Intellectual Property.

**10. Force Majeure** – Means a circumstance beyond the reasonable control of the parties which results in a party being unable to observe or perform an obligation under this Agreement. Such circumstances shall include but not be limited to acts of God, lightning strikes, any natural disaster, acts of war, terrorism, riots, civil commotion, malicious damages, sabotage, revolution and strikes.

**11. Intellectual Property** – Means any IP Rights in Social Pinpoint and any associated customisations, enhancements, or modifications to Social Pinpoint after commencement of this Agreement, whether at Your request or otherwise.

**12. IP Rights** – means all intellectual property rights in any jurisdiction and other rights of a similar nature, including copyright, trademarks, patents, design and design rights for all software or computer programs, trade or other proprietary rights or any rights to registration, whether created before or after the commencement of this Agreement.

**13. Moderation Policy** – Means Our policy for the moderation of comments published on Our website which may be varied from time to time.

**14. Our Services** – Consists of all services, products, and Applications that Social Pinpoint provides now or in the future and made available by Us to You in accordance with this Agreement, including access to the Application.

**15. Privacy Policy** – means the privacy policy published on our website which may be varied from time to time.

**16. Service Level Agreement** – means the service level agreement published on our website which may be varied from time to time.

**17. Security Statement Document** – means the system security document published on our website which may be varied from time to time.

**18. You** – When we say You, You've or Your, we mean both you and any entity or firm you're authorized to represent.

**19. Applicable Law** – This Agreement will be governed by the laws of the State of Delaware. Notices under this Agreement may be delivered by email to Us at the addresses specified in the Customer Registration Form, and to You at the email addresses You specify to Us in Your Customer Registration Form. Notice will be deemed given upon sending the transmission if sent before 5 pm on a business day or otherwise at the commencement of the first business day following transmission. In this clause "business day" means Monday to Friday excluding public holidays in Delaware.

## Access to Social Pinpoint

**20. Access** – During the term of this Agreement, We will provide You with Our Services in the manner specified in the Service Level Agreement but subject to this Agreement.

**21. Set Up & Maintenance** – We provide Social Pinpoint as a tool to assist You in designing, setting up and maintaining a website for end users. Unless we expressly agree in the Customer Registration to assist You with the design, set up or maintenance of the website, You are solely responsible for using Social Pinpoint to carry out such activities.

**22. No assignment** – Unless otherwise agreed in writing by Us, access to Our Services are personal to You and use is not permitted by any other person or entity other than Your employees, contractors or third parties who are reasonably required to access the system for use on Your projects.

**23. Intellectual Property** – You acknowledge and agree that any Intellectual Property is retained by Us and shall not be available in any form for use by any third parties. Nothing in this Agreement is to be taken to be a transfer or assignment of the Intellectual Property or any of Our IP rights to You.

**24. Authorized Users** – You agree that the Agreement permits You to access and use Social Pinpoint in accordance with the number of Authorized Users set out in the Customer Registration, or the number of users applicable to Social



Pinpoint subscription tier You are paying for. Subject to You agreeing to any relevant increase in Fees, You may request an increase in the number of Authorized Users by submitting a request in writing to Us.

## Duration of Agreement

**25. Contract Period** – The contract period shall commence 7 days after You complete and sign Your Customer Registration and continues for the term indicated in the Customer Registration (Contract Period).

**26. Automatic Renewal** – Prior to the end of the Contract Period, We will issue an invoice for the Subsequent Period. Unless We receive a response from You indicating termination of the Agreement, the Agreement will be automatically renewed for a further term of the same duration as the original Contract Period (Subsequent Term).

**27. Survival** – Any terms which are capable of having effect after the expiration of this Agreement shall remain in full force and effect following the expiration of this Agreement.

## Privacy and Data Use

**28. Privacy** – Social Pinpoint uses Your data to provide services to You. Our privacy policy is an important part of this Agreement and how we deal with personal data.

**29. Data Use** – Subject to any lien arising because of unpaid Fees and to any further encumbrances arising outside our control, we acknowledge that Your Data remains the property of You. While we do not own Your Data, You grant Us a licence to use, copy, transmit, store analyze and back up all Data You submit to Us through Our Services, including personal data of yourself and others, to:

- Enable You to use Our Services;
- Allow Us to improve, develop and protect Our Services; create new services;
- Communicate with You about this Agreement or Our Services;
- And send information We think may be of interest to You.



**30. Delivery of Your Data where lawfully required** – If required by any applicable law or legally binding order of any court, government, semi-government authority or administrative or judicial body or the applicable rules of any securities exchange, We may disclose Your Data or related data, documentation or records or confidential information.

**31. Anonymous statistical data** – When You use Our Services, We may create anonymous statistical data from Your Data and usage of Our Services, including through aggregation. Once anonymized, We may use it for Our own purposes, such as to provide and improve Our Services, to develop new services or product offerings, to identify business trends, and for other uses We communicate to You.

### **32. Marketing & Promotion**

- Your Brand - Unless instructed by You in writing upon signing, You hereby irrevocably acknowledge and agree that We may use Your logo or organization name on our marketing collateral in any form or medium, (including but not limited to our website, sales proposals, information sheets, social media posts, and public displays) to indicate or represent that You are a current client of Our business. For the purpose of this clause, You give Us a non-exclusive, worldwide, fee-free licence to use the IP Rights in Your logo or organization name whilst You use any of Our Services for the limited purposes set out in this clause unless revoked by written notice by You to Us in accordance with this Agreement.
- Our Brand – We incorporate our corporate, service and product logos, marks and other branding elements into the footer (or an alternative location agreed with you) of each website which you publish or otherwise make publicly available using Social Pinpoint, and this may not be removed, unless otherwise agreed in writing by us.

**33. General Data Protection Regulation (GDPR)** – Because We do not collect or determine the use of any personal data contained in Your Data, Social Pinpoint is not acting in the capacity of data controller in terms of the European Union’s General Data Protection Regulation (Regulation (EU) 2016/679, “GDPR”) and does not have the associated responsibilities under the GDPR. Social Pinpoint should be considered only as a processor on behalf of You and Your users as to any Data containing personal data that is subject to the requirements of the GDPR. Except as provided in the privacy policy, Social Pinpoint does not independently cause Your Data stored in connection with Our



Services to be transferred or otherwise made available to third parties, except to third party sub-contractors who may process such data on behalf of Social Pinpoint in connection with the provision of Our Services to You.

You and Your users are the data controllers under the regulations, meaning that You and Your users control the manner in which any personal data is collected and used as well as the determination of the purposes and means of the processing of such personal data.

Social Pinpoint is not responsible for the content of the personal data contained in Your Data or other information stored on Our servers (or its sub-contractors' servers) at the discretion of the You and Your users, nor is Social Pinpoint responsible for the manner in which You collect, handle disclosure, distribute or otherwise process such information.

**34. Data Processing Agreement** – If You need a signed Data Processing Addendum in addition to this Agreement and Privacy Policy, please contact us.

**35. System Security** – Refer to Our Security Statement Document for more information relating to Your data and security.

## Maintenance, Downtime, and Data Loss

**36. Service Acknowledgements** – As with all computers and internet driven software applications, there may be times that Our chosen server is not operational or has been shut down for maintenance. There may also be software errors or other interruptions in use affecting Our chosen server or Our Services. Despite taking all reasonable security measures, Our chosen server may be vulnerable to hackers, viruses, and unauthorized access and We do not guarantee the integrity of data, and that as a result of any of these events there may be interruption of Your business.

**37. Breach of Security** – Subject to the clauses under the 'Liability' section below, You are responsible for any breach of security at Your premises or to Your computer system, which results in any loss or damage to Us and We are equally responsible for any breach at Our premises or to Our computer system, which results in any loss or damage to You.

**38. Malfunction** – We do not warrant that Our Services are or will be completely error free.

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**39. Failure of Our Services** – We shall not be responsible for any failure of Our Services, if such failure is caused by factors beyond Our reasonable control including, but not limited to, a Force Majeure event, telecommunications failure or fault, defective network or Internet connections, poor reception, defective equipment utilized by or incorrect operation by You of Your own access facilities, or the loss of service from the service provider hosting the Application.

**40. Modifications** – We may exercise our discretion as to the configuration of Our Services, release new updates, modifications, and enhancements to Our Services, and in some cases discontinue features without prior notification to You. Where this occurs, we will Endeavor to notify You.

## User Conduct

**41. Your Acknowledgement** – All Content is the sole responsibility of the person who made the Content available, and You are solely liable and responsible for Your Content. You shall not:

- Undermine the security or integrity of Our computing systems or networks.
- Use Our Services in any way that might impair functionality or interfere with other people's use.
- Access any system without Our permission.
- Introduce or upload anything that: (a) infringes any IP Rights or other proprietary rights of any party; (b) violates any applicable law or is illegal; or (c) violates any third-party's right, including right to privacy.
- Introduce or upload anything that contains software viruses, trojan horses, worms, time bombs, cancelbots or any other computer code, files or programs designed to or that may interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment.
- Impersonate any person or entity, including without limitation a Social Pinpoint representative or another user of Social Pinpoint, or falsely state or otherwise misrepresent Your affiliation with a person or entity.
- Create a false identity for the purpose of misleading others as to Your identity or the originator of a message.
- Interfere with or disrupt Our website or servers or networks connected to Our website, or disobey any requirements, procedures, policies or regulations of networks connected to Our website.



- Modify, copy, adapt, reproduce, disassemble, decompile, reverse engineer, or extract the source code of any part of Our Services.

If you become aware that any Authorized User has breached this Agreement or our Acceptable Use Policy, you must promptly notify us. On becoming aware of such a breach, whether from your notice or otherwise, we may immediately suspend that Authorized User's access without notice, or request that you suspend their access and you agree to immediately implement such suspension.

**42. Your Access** – You are responsible for providing Your own internal facilities and equipment necessary to access the Application. We accept no responsibility for any deficiency in Your access facilities.

## Pricing

**43. You must pay fees** – You shall pay Our Fees at the rate and in the manner specified in the Customer Registration. You agree to pay Our Fees when requested and that where any of Our Fees are payable in advance of a future period, then those Fees are payable in consideration of Us making available Our Services and any of our other goods and services to You for the period to which that Fee relates and but for valid termination for a Force Majeure event, are not refundable in any instance. For the avoidance of doubt, this clause applies if this Agreement is terminated before the end of the Contract Period (or Subsequent Term) so that Fees for the full Contract Period (or Subsequent Term) remain payable.

**44. Upgrades** - In the event that You exceed the limits of Your current subscription outlined in Your Customer Registration at any time during the Contract Period, You will automatically be upgraded to a new subscription tier. You must pay a pro-rata amount equal to the difference between the Fees outlined in Your Customer Registration and the price of Your new subscription tier. The pro-rata amount will be based on the number of days left in the relevant Contract Period and pricing available upon request from Your customer success manager.

**45. Price Increases** - We may increase Our pricing annually on the anniversary of the commencement of Your Agreement. You will be notified by Us of any increased Fees at least thirty (30) days before the increase takes effect. If the increase in Fees is by 5.0% or less, You agree to pay the increased Fees and there is nothing more You need to do. If the increase in Fees is greater





than 5.0%, and You do not agree to pay the increased Fees, You may notify Us within 30 days and request that We terminate this Agreement at the end of Your Contract Period (or Subsequent Term).

**46. Importance of timely payments** – In order to continue accessing Our Services, You need to make timely payments based on the pricing plan You selected. If we do not receive timely payments, we may suspend access to Our Services until the payment is made.

**47. Exclusion of Taxes** – The Fees are exclusive of taxes, duties and fees imposed or levied in connection with Your access to Our Services. Without limiting the foregoing, You shall be liable for any new taxes, duties or Fees during the term in respect of the Access to Our Services.

## Termination

**48. Termination by a party** – Without limiting the generality of any other clause in this Agreement, a party may terminate this Agreement immediately by notice in writing if:

- the other party (“defaulting party”) is in breach of any term of this Agreement and such breach is not remedied within thirty (30) days of the other party notifying the defaulting party of that breach;
- a party becomes, threatens, or resolves to become or are in jeopardy of becoming subject to any form of insolvency administration; any party, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
- any party ceases or threatens to cease conducting its business;
- We are delayed or fail to perform a substantial part of our obligations under this Agreement for a period of sixty (60) days or more due to an event of Force Majeure.

**49. Payments upon termination** – In the event this Agreement is terminated prior to the end the Contract Period (or Subsequent Term) due to a breach of this Agreement by You, Fees for the remaining Contract Period must be paid by You within 14 days of the date of termination. It is agreed that the outstanding Fees are either a fee for service and in consideration of Us making Our Services available for the Contract Period or Subsequent Term (as the case may be)



and/or is not a penalty and is a genuine pre-estimate of the loss we will suffer from early termination, bearing in mind Our Services are a SaaS service.

**50. Refunds** – If You cancel Our Services provided to You, or your access to Our Services is cancelled or suspended by Us in accordance with these terms, You understand that you are not entitled to a refund of any prepaid amount since such Fees are made in consideration of making Our Services available for the Contract Period (or Subsequent Period). If this Agreement is validly terminated due to Force Majeure event or a breach of this Agreement by Us (but not otherwise), We will refund, on a pro rata basis, moneys previously paid by You pursuant to this Agreement for Our Services not provided by Us to You.

**51. Retention of Your data** – Once this Agreement is terminated by You or Us, it is retained for a period of time in accordance with Our disengagement plan, available upon request.

## Indemnity

**52. Mutual Indemnity** – Each party shall at all times indemnify and hold harmless the other party, its officers, employees and agents (“those indemnified”) from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:

- a breach by the indemnifying party of its obligations under this Agreement.
- any wilful, unlawful, or negligent act or omission of the indemnifying party.

## Liability

**53. No Reliance** – You agree that You have not relied on any representations or warranties made by Us which have not otherwise been expressly stated in this Agreement.

**54. No liability for your breaches of laws** – We are under no obligation to You under this Agreement or otherwise if and to the extent Your access to Our Services constitutes a breach of any relevant law or regulation by You.

**55. Limitation of Liability** – Notwithstanding any other clause of this Agreement, the total liability of Us to You arising out of breach of our obligations under this Agreement (whether for breach of contract or warranty, under an indemnity, pursuant to any liquidated or other damages clause, for tort including negligence, for strict liability or on any other legal basis) is limited to:

- an amount equal to one year’s Fees under this document;
- minus any amount which You recover from another third party as a result of an action by You against that third party, and notwithstanding any other provision of this Agreement, neither party will be liable to the other under this Agreement in contract, tort or otherwise;
- to the extent that any loss is caused or contributed to by the negligence or default by the other party or their personnel;
- for any indirect consequential loss related to or connected with this Agreement.

For the avoidance of doubt, this clause does not exclude or limit Your liability for the payment of Fees under this Agreement.

**56. Terms Implied by Law** – Where legislation implies in this Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in this Agreement. However, Our liability for any breach of such condition or warranty shall be limited, at Our option, to one or more of the following:

- (A) the supplying of the services again; or
- (B) the payment of the cost of having the services supplied again.

## Sub-Contracts

**57. Our Right** – We may sub-contract for the performance of this Agreement without Your prior consent, provided that We remain responsible for our obligations to You under this Agreement.



## Changes to the Terms and Conditions

58. We may change these terms and conditions from time to time. Material changes will be published on our website.

