

# Terms of Service

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Pangea Foundation, Inc. ("**Pangea**") brings capacity-building software to nonprofits. Our intention is that these Terms of Service (the "**Terms**") are as straightforward and easy to understand as possible. We are committed to keeping your data secure and being transparent about our processes.

**THESE TERMS WILL BE SUPERSEDED BY ANY ELECTRONIC OR WRITTEN AGREEMENTS BETWEEN PANGEA AND THE COMPANY OR LEGAL ENTITY YOU REPRESENT OR VOLUNTEER FOR RELATED TO THE DELIVERY OF OUR SERVICE.**

Please review the Terms carefully because they govern your individual use of our website located at [pangeafoundation.org](http://pangeafoundation.org), and particularly the Service at [aasconline.org](http://aasconline.org),

aasconline.net, and any of their subdomains (collectively, the "**Sites**"). To make these Terms easier to read, the Sites and the Pangea Platform are collectively called the "**Service**." If you do not agree to be bound by these Terms, then, except as otherwise provided in Section 16.e (Effect of Changes on Arbitration) you may not use the Service.

PLEASE NOTE THAT IF THE COMPANY OR LEGAL ENTITY YOU REPRESENT OR VOLUNTEER FOR HAS ENTERED INTO A MASTER SERVICES AGREEMENT WITH PANGEA, THAT AGREEMENT WILL SUPERSEDE THESE TERMS EXCEPT WITH RESPECT TO YOUR GENERAL USE OF OUR SITES.

## **1. Agreement and Changes to Terms**

### **a. Agreement to Terms**

These terms are a binding legal commitment between you and Pangea, so please read them carefully. If you don't agree to be bound by these terms, you may not use the Service.

### **b. Changes to Terms or Service**

We may modify or update the Terms and Service at any time, in our sole discretion. If we revise the Terms or make changes to the Service that we believe may significantly impact your use of the Service, we will communicate the update(s) to the owner of your Account via email and also post an updated version of the Terms on the Sites. If you continue to use the Service after we have communicated the modified Terms, you are indicating to us that you agree to be bound by the modified Terms. If you do not agree to be bound by the modified Terms, then you may not use the Service anymore. Because the Service is evolving over time we may change or discontinue all or any part of the Service, at any time and without notice, at our sole discretion.

## **2. Privacy Policy**

Please refer to our Privacy Policy for information on how we collect, use, and disclose information from our users. You acknowledge and agree that your use of the Service is subject to our Privacy Policy.

## **3. Your Account**

### **a. Eligibility**

You may use the Service only if you are 18 years or older and if you are not barred from using the Service under applicable law.

### **b. Registration and Your Information**

You must create an account ("**Account**") to use our Service (except for generally visiting and interacting with our Sites). You agree to provide accurate and complete information for your Account and to update such information, as needed, to keep it accurate, complete and up to date. If you do not do so we may prevent you from receiving future updates, and / or suspend or terminate your Account. You agree that you won't disclose your Account password to anyone, and you agree that you will notify us immediately of any unauthorized use of your Account by emailing us at [support@pangeafoundation.org](mailto:support@pangeafoundation.org). You agree that you

are responsible for all activities that occur under your Account, including the activities of your Authorized Users (as defined below), whether or not you know about them.

## **4. Access and Use of the Service**

### **a. Service License Grant**

Subject to your compliance with these Terms, Pangea grants you a limited, non-exclusive, non-transferable, non-sublicensable license to access and use the Service, including any related documentation or training and support videos that may be provided to you by Pangea during the term of these Terms (collectively, the "**Documentation**") solely to advance the mission of the company or legal entity you represent.

### **b. License Restrictions**

You may not allow access to or use of the Service by anyone other than individuals whom you have authorized through the methods permitted by Pangea (e.g., by assigning unique login credentials to each such individual) to use the Service solely on behalf of your company or legal entity you represent. Such individuals are referred to in these Terms as "**Authorized Users**," and may include but are not limited to employees, consultants, contractors, volunteers, and agents.

You may not copy any portion of the Service. Except as expressly permitted in these Terms, you may not: (i) copy, modify or create derivative works based on the Service; (ii) distribute, transfer, sublicense, lease, lend or rent the Service to any third party; (iii) reverse engineer, decompile or disassemble the Service; or (iv) make the functionality of the Service available to anyone other than your Authorized Users except with our express written permission. Pangea reserves all rights in and to the Service not expressly granted to you under these Terms.

### **c. Text Messaging**

Our Service may allow you to send text messages using an automatic telephone dialing system or other technology ("SMS"). You represent and warrant that you have all rights and consents and will obtain all rights and consents necessary to send any SMSs, and are responsible for complying with any applicable laws, rules, and regulations with respect to the foregoing.

## **5. Customer Account Data**

You acknowledge that you have read the Pangea Privacy Policy and understand that it sets forth how we collect, store, and use your Customer Account Data (as defined therein). If you do not agree with our Privacy Policy, then you must stop using the Service.

You instruct us to use and disclose User Content (as defined below) and Customer Account Data as necessary to (a) provide the Service consistent with the Privacy Policy and this section of the Terms, including detecting, preventing, and investigating security incidents, fraud, spam, or unauthorized use of the Service; (b) respond to any technical problems or queries (by you or your Authorized Users) and ensure the proper working of the Service; (c) to protect ourselves, our other customers, the public from harm or illegal activities, or the Service; (d) to respond to an emergency which we believe in, good faith, requires us to disclose Customer Account Data or User Content to assist in preventing a death or serious

bodily injury; or (e) comply with any applicable law, regulation, legal process or government request.

## 6. Acceptable Use Policy

Without limiting any other terms of these Terms, you must use the Service exclusively for authorized and legal purposes, consistent with all applicable laws, regulations, and the rights of others. You will keep confidential and not disclose to any third parties any user identifications or Account information. You acknowledge that the Service is not designed, intended, or authorized for use in hazardous or mission-critical circumstances or for uses requiring fail-safe performance, or where failure could lead to death, personal injury, or property or environmental damage. You acknowledge that the Service is not designed for transaction processing or other commerce-related activities. You agree not to use the Service for such purposes or under such circumstances. The Service is not intended for use by people under the age of 18. You must ensure that each of your Authorized Users is aware of and complies with the requirements and restrictions set forth in this paragraph.

You are responsible for all activities that occur under your Account (or any of your Authorized Users' accounts), and for Authorized Users' compliance with these Terms. You agree that these Terms are concluded between you and Pangea, and not between Pangea and your Authorized Users. You agree to (a) be responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all User Content (as defined below) and Customer Account Data that you (or any of your Authorized Users) input into or store using the Service; (b) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify Pangea promptly of any such unauthorized access or use; and (c) comply with all applicable local, state, federal and foreign laws in using the Service.

## 7. Feedback

We welcome feedback, comments, and suggestions for improvements to the Service ("**Feedback**"). You grant to us a non-exclusive, worldwide, perpetual, irrevocable, fully-paid, royalty-free, sublicensable and transferable license under any and all intellectual property rights that you own or control to use, copy, modify, create derivative works based upon and otherwise exploit the Feedback for any purpose.

## 8. Content Ownership, Responsibility, and Removal

### a. Definitions

For purposes of these Terms: (i) "**Content**" means text, graphics, images, software, audio, video, music, works of authorship of any kind, and information or other materials that are posted, generated, provided or otherwise made available through the Service by Pangea; and (ii) "**User Content**" means any Content that users (including you and your Authorized Users) provide to be made available through the Service except for Customer Account Data. Content includes, without limitation, User Content—but Customer Account Data (as discussed further in our Privacy Policy) is not included in User Content. Examples of User Content include but are not limited to posts on our Sites and communications made using the Service that may be visible to others.

### b. Rights in Customer Account Data and User Content Granted by You

Pangea does not claim any ownership rights in any Customer Account Data or User Content and nothing in these Terms will be deemed to restrict any rights that you may have to use and exploit either.

Subject to and without limiting Section 5 above, you hereby grant to Pangea a non-exclusive, transferable, sublicensable, worldwide, royalty-free license to use, copy, modify, create derivative work, publicly display, publicly perform, and distribute your Customer Account Data and User Content, solely as needed to operate, and provide the Service to you and with respect to Customer Account Data as otherwise specified in our Privacy Policy.

You are solely responsible for all your User Content and Customer Account Data. You represent and warrant that you have all rights and consents, and will obtain all rights and consents, with respect to all of your User Content and Customer Account Data to the extent necessary (i) for you and Pangea to comply with all applicable laws, rules and regulations including, without limitation, all applicable data protection and privacy laws; and (ii) for you to grant us the license rights in your User Content and Customer Account Data under these Terms. You also represent and warrant that neither your User Content, your Customer Account Data, nor your use and provision of your User Content or Customer Account Data to be made available through the Service, nor any use of your User Content or Customer Account Data by Pangea on or through the Service will infringe, misappropriate or violate a third party's intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

You can remove your User Content and Customer Account Data by specifically deleting it or requesting that Pangea delete it in accordance with our Privacy Policy.

#### c. Rights in Content Granted by Pangea

Subject to your compliance with these Terms, and except as otherwise licensed to you in accordance with Section 4.b above, Pangea grants you a limited, non-exclusive, non-transferable, non-sublicensable license to access and download, view, copy, display and print the Content solely for your internal purposes and solely in connection with your permitted use of the Service.

## **9. General Prohibitions and Pangea's Enforcement Rights**

Without limiting any other terms of these Terms, you agree not to do any of the following:

- Post, upload, publish, submit or transmit any Content that: (i) infringes, misappropriates or violates a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy; (ii) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (iii) is fraudulent, false, misleading or deceptive; (iv) is defamatory, obscene, pornographic, vulgar or offensive; (v) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (vi) is violent or threatening or promotes violence or actions that are threatening to any person or entity; or (vii) promotes illegal or harmful activities or substances.
- Use, display, mirror or frame the Service or any individual element within the Service, Pangea's name, any Pangea trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without Pangea's express written consent;

- Access, tamper with, or use non-public areas of the Service, Pangea's computer systems, or the technical delivery systems of Pangea's providers;
- Attempt to probe, scan or test the vulnerability of any Pangea system or network or breach any security or authentication measures;
- Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by Pangea or any of Pangea's providers or any other third party (including another user) to protect the Service or Content;
- Attempt to access or search the Service or Content or download Content from the Service through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the software and/or search agents provided by Pangea or other generally available third-party web browsers;
- Send any unsolicited or unauthorized advertising, promotional materials, email, junk mail, spam, chain letters or other form of solicitation;
- Use any meta tags or other hidden text or metadata utilizing a Pangea trademark, logo URL or product name without Pangea's express written consent;
- Use the Service or Content, or any portion thereof, for any commercial purpose or for the benefit of any third party or in any manner not permitted by these Terms;
- Forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Service or Content to send altered, deceptive or false source-identifying information;
- Attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Service or Content;
- Interfere with, or attempt to interfere with, the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the Service;
- Collect or store any personally identifiable information from the Service from other users of the Service without their express permission;
- Impersonate or misrepresent your affiliation with any person or entity;
- Violate any applicable law or regulation; or
- Encourage or enable any other individual to do any of the foregoing.

Although we are not obligated to monitor access to or use of the Service or Content or to review or edit any Content, we have the right to do so for the purpose of operating the Service, to ensure compliance with these Terms, and to comply with applicable law or other legal requirements. We reserve the right, but are not obligated, to remove or disable access to any Content, at any time and without notice, including, but not limited to, if we, at our sole discretion, consider any Content to be objectionable or in violation of these Terms. We have the right to investigate violations of these Terms or conduct that affects the Service.

We may also consult and cooperate with law enforcement authorities to prosecute users who violate the law.

## **10. DMCA/Copyright Policy**

Pangea respects copyright law and expects its users to do the same. It is Pangea's policy to terminate in appropriate circumstances Account holders who repeatedly infringe the rights of copyright holders.

## **11. Warranty Disclaimers**

THE SERVICE AND CONTENT ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, WE EXPLICITLY DISCLAIM ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. We make no warranty that the Service will meet your requirements or be available on an uninterrupted, secure, or error-free basis. We make no warranty regarding the quality, accuracy, timeliness, truthfulness, completeness, or reliability of any Content.

## **12. Links to Third Party Websites**

The Service may contain links to third-party websites or resources. We provide these links only as a convenience and are not responsible for the content, products, or Service on or available from those websites or resources or links displayed on such websites. You acknowledge sole responsibility for and assume all risk arising from, your use of any third-party websites or resources.

## **13. Termination**

We may terminate your access to and use of the Service, at our sole discretion, at any time and without notice to you. You may cancel your Account at any time by sending an email to us at [support@pangeafoundation.org](mailto:support@pangeafoundation.org).

Upon any termination, discontinuation or cancellation of the Service or your access thereto, the following provisions of these Terms will survive: Feedback; the first paragraph of Content Ownership, Responsibility and Removal regarding Pangea's ownership of the Content and Service; Termination; Confidentiality; Warranty Disclaimers; Indemnity; Limitation of Liability; Dispute Resolution; and General Terms 8, 9, 10, 11, this sentence of Section 13, and 14 through 17.

## **14. Indemnity**

You will indemnify and hold harmless Pangea and its officers, directors, employees and agents, from and against any claims, disputes, demands, liabilities, damages, losses, and costs and expenses, including, without limitation, reasonable legal and accounting fees arising out of or in any way connected with (i) your access to or use of the Service or Content, (ii) your User Content, or (iii) your violation of these Terms.

## **15. Limitation of Liability**

NEITHER PANGEA NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICE OR CONTENT WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL,

EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE SERVICE ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT PANGEA HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

IN NO EVENT WILL PANGEA'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICE OR CONTENT EXCEED THE AMOUNT YOU HAVE PAID TO PANGEA FOR THE USE OF THEIR SERVICE IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT GIVING RISE TO THE CLAIM OR ONE HUNDRED DOLLARS (\$100), IF YOU HAVE NOT HAD ANY PAYMENT OBLIGATIONS TO PANGEA, AS APPLICABLE.

THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN PANGEA AND YOU.

## **16. Dispute Resolution**

### **a. Mandatory Arbitration of Disputes**

We each agree that any dispute, claim, or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation, or validity thereof or the use of the Service or Content (collectively, "**Disputes**") will be resolved solely by binding, individual arbitration and not in a class, representative or consolidated action or proceeding. You and Pangea agree that the U.S. Federal Arbitration Act governs the interpretation and enforcement of these Terms, and that you and Pangea are each waiving the right to a trial by jury or to participate in a class action. This arbitration provision will survive termination of these Terms.

### **b. Conducting Arbitration and Arbitration Rules**

The arbitration will be conducted by the American Arbitration Association ("**AAA**") under its Consumer Arbitration Rules (the "**AAA Rules**") then in effect, except as modified by these Terms. The AAA Rules are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. A party who wishes to start arbitration must submit a written Demand for Arbitration to AAA and give notice to the other party as specified in the AAA Rules. The AAA provides a form Demand for Arbitration at [www.adr.org](http://www.adr.org).

If your claim is for U.S. \$10,000 or less, you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic or video-conference hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds U.S. \$10,000, the right to a hearing will be determined by the AAA Rules. Any arbitration hearings will take place in the county (or parish) where you live, unless we both agree to a different location. The parties agree that the arbitrator will have exclusive authority to decide all issues relating to the interpretation, applicability, enforceability, and scope of this arbitration agreement.

### **c. Arbitration Costs**



Payment of all filing, administration and arbitrator fees will be governed by the AAA Rules. We'll pay for all filing, administration and arbitrator fees and expenses if your Dispute is for less than \$10,000 unless the arbitrator finds your Dispute frivolous. If we prevail in arbitration, we'll pay all of our attorneys' fees and costs and won't seek to recover them from you. If you prevail in arbitration, you will be entitled to an award of attorneys' fees and expenses to the extent provided under applicable law.

#### d. Class Action Waiver

YOU AND PANGEA AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, if the parties' dispute is resolved through arbitration, the arbitrator may not consolidate another person's claims with your claims and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this Dispute Resolution section will be null and void.

#### e. Effect of Changes on Arbitration

Notwithstanding the provisions of Section 1.b above, if Pangea changes any of the terms of this Section 16 after the date you first accepted these Terms (or accepted any subsequent changes to these Terms), you may reject any such change by sending us written notice (including by email to [support@pangeafoundation.org](mailto:support@pangeafoundation.org)) within 30 days of the date such change became effective, as indicated in the "Last Updated" date above or in the date of Pangea's email to you notifying you of such change. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and Pangea in accordance with the terms of this Section 16 as of the date you first accepted these Terms (or accepted any subsequent changes to these Terms).

#### f. Severability

With the exception of any of the provisions in Section 16.d of these Terms, if an arbitrator or court of competent jurisdiction decides that any part of these Terms is invalid or unenforceable, the other parts of these Terms will still apply.

## **17. General Terms**

#### a. Governing Law

These Terms and any action related thereto will be governed by the Federal Arbitration Act, federal arbitration law, and the laws of the State of California without regard to its conflict of laws provisions. Except as otherwise expressly set forth in Section 16, the exclusive jurisdiction for all disputes between you and Pangea will be the state and federal courts located in San Diego, California, and you and Pangea each waive any objection to jurisdiction and venue in such courts.

#### b. Entire Agreement

These Terms constitute the entire and exclusive understanding and agreement between Pangea and you regarding the Service and Content, and these Terms supersede and replace any and all prior oral or written understandings or agreements between Pangea and you regarding the Service and Content, excepting that:

THESE TERMS WILL BE SUPERSEDED BY ANY ELECTRONIC OR WRITTEN AGREEMENTS BETWEEN PANGEA AND THE COMPANY OR LEGAL ENTITY YOU REPRESENT OR VOLUNTEER FOR RELATED TO THE DELIVERY OF OUR SERVICE, INCLUDING BUT NOT LIMITED TO THE MASTER SERVICES AGREEMENT.

If any provision of these Terms is held invalid or unenforceable by an arbitrator or court of competent jurisdiction, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.

c. No Assignment

You may not assign or transfer these Terms, by operation of law or otherwise, without Pangea's prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null. Pangea may freely assign or transfer these Terms without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

d. Notices

Any notices or other communications provided by Pangea under these Terms, including those regarding modifications to these Terms, will be given: (i) via email; or (ii) by posting to the Service. For notices made by email, the date of receipt will be deemed the date on which such notice is transmitted.

e. Waiver of Rights

Pangea's failure to enforce any right or provision of these Terms will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Pangea. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.

## **18. Contact Information**

If you have questions about these Terms or the Service, contact Pangea at Pangea Foundation, Inc., 3268 Governor Drive, #181, San Diego, CA, 92122; or via [support@pangeafoundation.org](mailto:support@pangeafoundation.org).