



TERMS OF USE

EFFECTIVE: FEBRUARY 25TH, 2019

OVERVIEW

Welcome to POINT380! This service is owned or operated by POINT380, LLC (“**POINT380**”, “**us**,” “**our**,” or “**we**”). These Terms of Use (“**Terms**”) set forth the terms and conditions under which you are authorized to use our “**Services**” which include:

- our FlagstaffRPO™ sustainability intelligence platform, and other modules, SaaS applications, and other web-based software and services where we link to/post this Policy (collectively the “**Platform**”); and
- our corporate website POINT380.com, and other websites where we link to/post this Policy, including any subdomains or mobile versions (the “**Corporate Site(s)**”).

Through your use of our Service, you agree to these Terms.

ADDITIONAL AGREEMENTS

To the extent additional rules or guidelines of POINT380 affect your use of our Service, those rules and guidelines (including our attached [Privacy Policy](#)) are hereby incorporated by reference into these Terms. We provide the Platform and process information relating to third parties that have entered into a subscription or services agreement with us (our “**Clients**”), and in relation to the Client’s authorized users of the Platform (“**Authorized Users**”). We may provide our Service to Clients pursuant to a services agreement or other contract (“**Service Agreement**”). In the event of a conflict between these Terms and our Privacy Policy or any Service Agreement, the Privacy Policy or Service Agreement shall control to the extent of such conflict. Capitalized terms not defined in these Terms will have the definition set forth in the Service Agreement or Privacy Policy.

YOUR ACCESS TO THE SERVICE

As a condition of your right to access and use our Service, you represent that you are of legal age to enter into a binding contract and that you are not a person barred from accessing the Service under the laws of the United States or any other country. POINT380 reserves the right to terminate your access in the event you violate these Terms or any Service Agreement. **YOU ARE ENTIRELY RESPONSIBLE FOR ALL ACTIVITIES CONDUCTED IN CONNECTION WITH THE USE OF THE SERVICES ON YOUR DEVICE(S) OR UNDER YOUR ACCOUNT.**

THIRD-PARTY PLATFORM AND CONTENT

We may use third party service providers in order to provide the Service to you. Except in connection with their use of our Service, the Client and other third parties are not governed by these Terms. You acknowledge that any reliance on representations and warranties provided by any party other than POINT380 will be at your own risk. Your use of any third-party-operated websites/services may be subject to additional terms of use and privacy policies.

CONSENT TO ELECTRONIC COMMUNICATIONS

By using the Service, you agree that POINT380 may communicate with you electronically regarding your use of the Service and related matters, and that any notices, agreements, disclosures or other communications that POINT380 sends to you electronically will satisfy any legal communication requirements, including that the communications be in writing. To withdraw your consent to your receipt of electronic notice, please notify POINT380 at: support@flagstaffrpo.com

MODIFICATIONS AND INTERRUPTION TO THE SERVICE

We reserve the right to modify or discontinue all or any portion of our Service with or without notice to you. We will not be liable if we choose to exercise this right. You acknowledge and accept that we do not guarantee continuous, uninterrupted or secure access to our Service, or that our Service will be error free. You understand that usage of our Service may be interfered with or adversely affected by numerous factors or circumstances outside of our control.

RESTRICTED ACTIVITIES

You may not engage in any of the following with regard to the Service (including without limitation posting or transmitting content through the Service):

- (1) violate or encourage the violation of any local, state, national, or international law or regulation;
- (2) collect or store personal data about other users of our Service or solicit personal information from any individual without proper rights or consent of the individual;
- (3) send or promote any message that is unlawful, libelous, defamatory, abusive, sexually explicit, threatening, vulgar, obscene, profane, disparaging regarding racial, gender or ethnic background, any statement that you have reason to know is false or misleading, or otherwise objectionable messages, as determined by POINT380 in its sole discretion;
- (4) infringe any patent, trademark, trade secret, copyright, right of publicity or privacy, or other right of any party, or distribute any content you do not have a right to make available under any law or under contractual or fiduciary relationships;
- (5) promote or distribute any unauthorized advertising, promotional materials, or material which can be characterized as "junk mail," "spam," "chain letters," "pyramid schemes," or similar material, any request for or solicitation of money, goods, or services for private gain, or any information posted primarily for advertising, promotional, or other commercial purposes;
- (6) disrupt or interfere with the security or use of the Service or any websites or content linked to them;
- (7) interfere with or damage the integrity of the Service, including, without limitation, through the use of viruses, Trojan horses, harmful code, denial of service attacks, packet or IP spoofing, forged routing or email address information or similar methods or technology or disobey any requirements, procedures, policies, or regulations of networks connected to our Service;
- (8) use the Service to store or transmit code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs or Trojan horses;
- (9) attempt to use another user, person or entity, misrepresent your affiliation with a person or entity, including (without limitation) POINT380 or create or use a false identity;
- (10) attempt to obtain unauthorized access to the Service or portions thereof that are restricted from general access;
- (11) use any meta tags or any other "hidden text" utilizing POINT380 name, trademarks, or product names;

- (12) attempt to reverse engineer or otherwise derive or obtain the code in any form for any software used in the Service;
- (13) engage in any activity that interferes with any third party's ability to use or enjoy the Service; or
- (14) assist any third party in engaging in any activity prohibited by these Terms.

Further, without our written consent, you may not:

- (1) reproduce, duplicate, copy, sell, resell, create derivative works, or exploit for any commercial purpose any POINT380 content or any use of or access to the Service;
- (2) use any high volume, automated, or electronic means (including, without limitation, robots, spiders, scripts, or other automated devices) to access the Service or monitor or copy our web pages or the content contained thereon;
- (3) deep link to the Service for any purpose; or frame the Service, place pop-up windows over any content, or otherwise affect the display of the Service;
- (4) access the Service in order to build a competitive service or to benchmark with a non-POINT380 service; or
- (5) reverse engineer the Service (to the extent such restriction is permitted by law).

DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

TO THE FULLEST EXTENT PERMITTED BY LAW, POINT380, ITS RELATED ENTITIES, ITS SERVICE PROVIDERS, ITS LICENSORS, AND ITS OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS (COLLECTIVELY THE "COMPANY PARTIES") EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, RELATED TO OUR SERVICES. YOU UNDERSTAND AND AGREE THAT YOUR USE OF OUR SERVICES IS AT YOUR SOLE RISK. OUR SERVICES AND ALL CONTENT, PRODUCTS AND SERVICES OFFERED THROUGH THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE COMPANY PARTIES ARE NOT RESPONSIBLE FOR THE TIMELINESS OF DELIVERY OF CONTENT, ANY FAILURES OF DELIVERY, ERRONEOUS DELETION, OR ANY LOSS OR DAMAGE OF ANY KIND YOU CLAIM WAS INCURRED AS A RESULT OF THE USE OF ANY SERVICES. UNDER NO CIRCUMSTANCES, WILL ANY OF THE COMPANY PARTIES BE LIABLE TO YOU OR TO ANY PERSON OR ENTITY CLAIMING THROUGH YOU FOR ANY LOSS, INJURY, LIABILITY OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH YOUR ACCESS TO, USE OF, INABILITY TO USE, OR RELIANCE ON ANY OF OUR SERVICES OR ANY CONTENT, PRODUCT OR SERVICE PROVIDED TO YOU THROUGH OR IN CONNECTION WITH ANY OF OUR SERVICES. THIS IS A COMPREHENSIVE LIMITATION OF LIABILITY THAT APPLIES TO ALL LOSSES AND DAMAGES OF ANY KIND WHATSOEVER, WHETHER DIRECT OR INDIRECT, GENERAL, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, LOSS OF DATA, GOODWILL, REVENUE OR PROFITS. THIS LIMITATION OF LIABILITY APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR ANY OTHER BASIS; EVEN IF ANY COMPANY PARTY HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES; AND WITHOUT REGARD TO THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES. IF ANY PART OF THIS LIMITATION OF LIABILITY IS FOUND TO BE INVALID, ILLEGAL OR UNENFORCEABLE FOR ANY REASON, THEN THE AGGREGATE LIABILITY OF THE COMPANY PARTIES UNDER SUCH CIRCUMSTANCES TO YOU OR ANY PERSON OR ENTITY CLAIMING THROUGH YOU FOR LIABILITIES THAT OTHERWISE WOULD HAVE BEEN LIMITED WILL NOT EXCEED ONE HUNDRED U.S. DOLLARS.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR CERTAIN TYPES OF DAMAGES. ACCORDINGLY, SOME OF THE ABOVE DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU.

You acknowledge that you may have or may in the future have claims against us which you do not know or suspect to exist in your favor when you agreed to these Terms and which if known, might materially affect your consent to these Terms. You expressly waive all rights you may have under Section 1542 of the California Civil Code, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

INDEMNIFICATION

You agree to indemnify and hold the POINT380 Parties harmless from any claim or demand, including reasonable attorney's fees and costs, made by any third party due to or arising out of your posting of any content on our Service, or other use of our Service in a manner not permitted by these Terms, including without limitation your actual or alleged violation of these Terms, or infringement of a third party's intellectual property or other rights by you, or another user of our Service using your computer, device or account.

SERVICE RESTRICTIONS, ALTERATIONS AND TERMINATIONS

POINT380 shall not be responsible for any delays or interruptions of, or errors or omissions contained in, the Services. POINT380 reserves the right, but shall not be required, to correct and delays, interruptions, errors or omissions. POINT380 may discontinue or alter any aspect of this Services, including, but not limited to: (i) restricting the time of availability, (ii) restricting the availability and/or scope of the Service for certain users, (iii) restricting the amount of use permitted, and (iv) restricting or terminating any user's right to use this service, at POINT380's sole discretion and without prior notice or liability.

USERNAMES, PASSWORDS AND SECURITY

Your username and password will be your identity for purposes of interacting with POINT380 and other users through the Service. You shall keep confidential, shall not disseminate, and shall use solely in accordance with this Agreement, your username and password for the Service. You shall immediately notify POINT380 if you learn of or suspect: (i) any loss or theft of your username or password, or (ii) any unauthorized use of your username or password or of the Service. In the event of such loss, theft, or unauthorized use, POINT380 may impose on you, at POINT380's sole discretion, additional security obligations. If any unauthorized person obtains access to the Service as a result of any act or omission by you, you shall use your best efforts to ascertain the source and manner of acquisition and shall fully and promptly brief POINT380. You shall otherwise cooperate and assist in any investigation relating to any such unauthorized access.

COPYRIGHT AND TRADEMARK INFORMATION

All content, copyrights and other intellectual property rights in the content available on our Service, including without limitation design, text, graphics, interfaces, and the selection and arrangements thereof (collectively "**Content**"), are owned by POINT380, its Clients, or users with all rights reserved, or in some cases may be licensed to POINT380 by the Client, user, or other third parties. This Content is protected by the intellectual property rights of POINT380 or those owners. All Content which qualifies for protection under U.S. Federal Copyright Law is subject to the exclusive jurisdiction of the Federal Court System, whether registered or unregistered. All trademarks displayed on our Service are the trademarks of their respective owners, and constitute neither an endorsement nor a recommendation of such parties. In addition, such use of trademarks or links to the websites

of third parties is not intended to imply, directly or indirectly, that those third parties endorse or have any affiliation with POINT380.

PERMITTED USE OF THE CONTENT

Any use of Content on the Service, including without limitation reproduction for purposes other than those noted herein, modification, distribution, replication, any form of data extraction or data mining, or other commercial exploitation of any kind, without prior written permission of an authorized officer of POINT380 or as part of a Client agreement with POINT380, is strictly prohibited. With the exception of search engines, you agree that you will not use any robot, spider, or other automatic device, or manual process to monitor or copy our web pages or the Content contained therein without prior written permission of POINT380. You may not make any use of Content owned by any third parties which is available on the Service, without the express consent of those third parties.

CONTENT COMPLAINTS

If you believe that any Content on our Service violates these Terms or is otherwise inappropriate, please report the Content by contacting us at: support@flagstaffrpo.com

NOTIFICATION OF CLAIMED COPYRIGHT INFRINGEMENT

In the event that you find content posted on our Service which you believe to be an infringement of the copyright of any third party, please immediately contact POINT380's Copyright Agent as described below. To report any alleged infringement, please contact us in writing by providing a signed statement containing the following information pursuant to the Digital Millennium Copyright Act ("**DMCA**"):

Your name, address, telephone number, and email address, and if you are acting on behalf of the owner of the intellectual property, the name of the owner;

- (1) a statement, made under penalty of perjury, that you are the owner of the copyright or are authorized to act on behalf of the owner;
- (2) a detailed description of the copyrighted work or other intellectual property that you claim has been infringed;
- (3) if your claim is based on a registered work, the registration number, and the date of issuance of the registration;
- (4) a description of the infringing material and the URL where such material is located on the Service, or a description of where on our Service you found such material;
- (5) your written statement that you believe, in good faith, that the use of the work on our Service has not been authorized by the true owner of the work, its agent, or as a matter of law; and
- (6) a statement that all of the information you have provided is true.

Please send your notice of alleged infringement to us:

POINT380
Attn: DMCA
PO Box 1868
Boulder CO 80306
E-mail: support@flagstaffrpo.com, subject line "DMCA Notice"

In accordance with the DMCA, it is the policy of POINT380 to terminate use of our Service by repeat infringers in appropriate circumstances.

USER-SUBMITTED CONTENT

Any content uploaded, posted, submitted, or otherwise made available by individual users of the Service, including without limitation all files, documents and any other Content which does not originate with POINT380 ("**User Content**"), is the sole responsibility of the person who made such User Content available on the Service. Under no circumstances will POINT380 be liable in any way for any User Content made available through the Service by you or any third party.

Since POINT380 does not control the User Content posted on the Service, it does not guarantee the truthfulness, integrity, accuracy, suitability, or quality of that User Content, and it does not endorse such User Content. You also agree and understand that by accessing the Service, you may encounter Content that you may consider to be objectionable. User Content is owned by the author thereof, and POINT380 does not claim ownership of original works created and posted by individual visitors to the Service. POINT380 reserves the right (but has no obligation) in its sole discretion to pre-screen, edit, refuse, move or remove any User Content that is posted on the Service. You agree that the exercise by POINT380 of such discretion shall not convert or transform User Content to content owned or provided by POINT380, and the user who made such User Content available on the Service will retain ownership thereof as described below.

PROVIDING FEEDBACK TO POINT380

We welcome your comments and feedback about our Service. All information and materials submitted to POINT380 through the Service or otherwise, such as any comments, feedback, ideas, questions, designs, data or the like regarding or relating to the Service or the business of POINT380 (collectively, "**Feedback**"), will be considered NON-CONFIDENTIAL and NON-PROPRIETARY with regard to you, but POINT380 reserves the right to treat any such Feedback as the confidential information of POINT380.

By submitting Feedback to POINT380, you assign to the Company Parties, free of charge, all worldwide rights, title and interest in all copyrights and other intellectual property rights in such Feedback. The Company Parties will be entitled to use any Feedback you submit, and any ideas, concepts, know-how or techniques contained in any such Feedback, for any purpose whatsoever, including but not limited to developing, manufacturing and marketing products and services using such Feedback without restriction and without compensating you in any way. You are responsible for the information and other content contained in any Feedback you submit to us, including, without limitation, its truthfulness and accuracy.

GOVERNING LAWS

The interpretation of the rights and obligations of the parties under this Agreement, including, to the extent applicable, any negotiations, arbitrations or other proceedings hereunder, will be governed in all respects exclusively by the laws of the State of Colorado, U.S.A. Each party agrees that it will only bring any action or proceeding arising from or relating to this Agreement in a federal court in the state and federal courts of Denver, Colorado, and you irrevocably submit to the personal jurisdiction and venue of any such court in any such action or proceeding or in any action or proceeding brought in such courts by POINT380.

DISPUTE RESOLUTION

By entering into Terms of Use, you hereby irrevocably waive any right you may have to join claims with those of others in the form of a class action or similar procedural device. Any claims arising out of, relating to, or connected with these Terms of Use must be asserted individually.

You acknowledge and agree that, regardless of any statute or law to the contrary, any claim or cause of action you may have arising out of, relating to, or connected with your use of the Service must be filled within one calendar year after such claim or cause of action arises, or forever be barred. If a claim proceeds in court, we each waive any right to a jury trial.

COMPLIANCE WITH LAWS

You assume all knowledge of applicable law and you are responsible for compliance with any such laws. You may not use the Service in any way that violates applicable state, federal, or international laws, regulations or other government requirements.

NOTICE FOR CALIFORNIA RESIDENTS

If you are a California resident, in accordance with Cal. Civ. Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Service of the California Department of Consumer Affairs by contacting them in writing at 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210.

CHANGES TO THESE TERMS

We reserve the right, at any time, to modify, alter, or update these Terms without prior notice. You are encouraged to check this page regularly for changes to the Terms. Modifications will become effective immediately upon being posted to our Service, without further notice to you. Your continued use of any of our Service after such modifications are posted constitutes your acknowledgement and acceptance of such modifications, and you may not amend these Terms.

OTHER TERMS

Assignment - These Terms of Use will be binding upon each party hereto and its successors and permitted assigns. These Terms of Use are not assignable or transferable by you without the prior written consent of POINT380. You agree that these Terms of Use and any other agreements referenced herein may be assigned by us, in our sole discretion, to a third party in the event of a merger or acquisition, or otherwise.

Integration - These Terms of Use (including all of the policies described in these Terms of Use, which are incorporated herein by this reference) contain the entire understanding of the parties regarding its subject matter, and supersedes all prior and contemporaneous agreements and understandings between the parties regarding its subject matter.

Waiver - No failure or delay by a party in exercising any right, power or privilege under these Terms of Use will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.

Severability - If any provision of these Terms of Use is determined by a court of law to be unlawful, void or unenforceable for any reason, the other provisions (and any partially-enforceable provision) shall not be affected thereby and shall remain valid and enforceable to the maximum possible extent, and the invalid provision will be modified as necessary to make it valid and enforceable while as closely as possible reflecting the original intentions of POINT380.

Limitation - You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of our Service or relating to these Terms of Use must be filed within one (1) year after such claim or cause of action arose or be forever barred.

No Relationship - No agency, partnership, joint venture, or employee-employer relationship is intended or created by these Terms of Use.

Force Majeure - POINT380 will not be liable for any failure or deficiency in the performance or availability of the Service by reason of the occurrence of any event beyond our reasonable control, including without limitation, a labor disturbance, an Internet outage, interruption of service, communication outage, failure by a service provider to POINT380, fire, terrorism, natural disaster, or war.