

# **Penguin Solutions, Inc.**

## **Code of Business Conduct and Ethics**

### **I. Introduction**

This Code of Business Conduct and Ethics (the “Code”) has been adopted by the Board of Directors (the “Board”) of Penguin Solutions, Inc. (together with its subsidiaries, “Penguin Solutions” or the “Company”). We at Penguin Solutions are committed to the highest standards of business conduct in our relationships with each other, with companies with which we do business and with our stockholders and others. This requires that we conduct our business in accordance with all applicable laws and regulations, including all requirements of the Securities and Exchange Commission (the “SEC”) and The Nasdaq Stock Market LLC (“Nasdaq”) listing standards, and in accordance with the highest standards of business ethics. This Code helps each of us in this endeavor by providing a statement of the fundamental principles and key policies and procedures that govern the conduct of our business. This Code describes standards of conduct for all employees and officers of the Company as well as directors of the Company, as applicable below (collectively, “Company Personnel” or “you”). This Code is a statement of the Company’s expectations for Company Personnel. Neither the adoption of this Code nor any description of its provisions constitutes a representation that all Company Personnel are at any time in full compliance.

The purpose of this Code is to deter wrongdoing and to promote: (i) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships, (ii) full, fair, accurate, timely and understandable disclosure in our SEC reports and other public communications, (iii) compliance with applicable laws, rules and regulations, (iv) prompt internal reporting of violations of this Code to appropriate persons identified in this Code, (v) accountability for adherence to this Code, including fair processes by which to determine consistent enforcement of this Code, and (vi) protection for persons reporting any possible or actual violations of this Code.

Our business depends on the quality of the Company’s reputation and in turn on all of us to exhibit integrity and engage only in principled business conduct. Thus, in many instances, the policies referenced in this Code go beyond the requirements of the law.

This Code is a statement of policies for individual and business conduct and does not, in any way, constitute an employment contract or an assurance of continued employment. Employees of the Company are employed at-will except when they are covered by an express, written employment agreement. This means that an employee may choose to resign his or her employment at any time, for

any reason or for no reason at all. Similarly, the Company may choose to terminate an individual's employment at any time, with or without notice and for any legal reason or for no reason at all.

Each of us is responsible for knowing and understanding the policies and guidelines contained in the Code. If questions arise, ask them; if there are ethical concerns, raise them. The Company's Chief Legal Officer, and where applicable, specified members or committees of the Board, are responsible for overseeing and monitoring compliance with this Code, and the other resources set forth in this Code are available to answer questions and provide guidance and for all to report suspected misconduct. Our conduct must reflect the Company's values, demonstrate ethical leadership and promote a work environment that upholds the Company's reputation for integrity, ethical conduct and trust.

## **II. Compliance with Laws, Rules, and Regulations**

We are committed to conducting our business affairs with honesty and integrity and in full compliance with all applicable laws, rules and regulations. Company Personnel may not commit an illegal or unethical act, or instruct others to do so, for any reason. It is the personal responsibility of Company Personnel to adhere to the standards and restrictions imposed by these laws, rules and regulations in the performance of their duties for the Company.

## **III. Trading on Inside Information**

Using non-public Company information to trade in securities or providing a family member, friend, or any other person with a "tip" is illegal. All non-public Company information is considered inside information and may not be used for personal gain. You are required to familiarize yourself and comply with Penguin Solutions' Insider Trading and Confidentiality Policy.

## **IV. Protection of Confidential Proprietary Information**

Company Personnel may learn, to a greater or lesser degree, facts about the Company's business, plans, operations or "secrets of success" that are not known to the general public or to competitors. For purposes of this Code, "Confidential Information" is all non-public information (whether or not material to the Company) entrusted to or obtained by Company Personnel by reason of their position with the Company. Sensitive information such as data of companies with which we do business, the terms offered or prices charged and marketing or strategic plans are examples of the Company's Confidential Information or trade secrets. Confidential Information includes all non-public information that might be of use to competitors, or harmful to the Company or companies with which we do business, if disclosed. During the course of performing their responsibilities, Company Personnel may obtain information

concerning possible transactions with other companies or receive Confidential Information concerning other companies that the Company may be under an obligation to maintain as confidential.

Confidential Information also includes all information about Board and Board committee deliberations. Disclosure of information about Board or Board committee deliberations and decisions outside of the official disclosures made by the Board and the Company can cause harm to the Company and undermine the ability of the Board or the Board committees to reach decisions efficiently and to maintain the culture of trust that supports rigor in Board or Board committee deliberations.

Individuals must maintain the confidentiality of information entrusted to them by the Company or companies with which the Company does business, except when disclosure is authorized or legally mandated. Company Personnel who possess or have access to Confidential Information or trade secrets must:

- Not use the information for their benefit or the benefit of persons inside or outside the Company;
- Carefully guard against disclosure of that information to people outside the Company. For example, such matters should not be discussed with family members or business or social acquaintances or in places where the information may be overheard, such as taxis, public transportation, elevators or restaurants; and
- Not disclose Confidential Information to other Company Personnel unless such Company Personnel need the information to carry out business responsibilities.

Confidentiality agreements are commonly used when the Company needs to disclose Confidential Information to others. A confidentiality agreement puts the person receiving Confidential Information on notice that he or she must maintain the secrecy of such information. If, in doing business with persons not employed by or otherwise providing services to the Company, an individual foresees that he or she may need to disclose Confidential Information, he or she should discuss the utility of entering into a confidentiality agreement with the Company's Legal department.

Company Personnel's obligation to protect Penguin Solutions' proprietary and Confidential Information continues even after leaving Penguin Solutions. Upon departure from Penguin Solutions, Company Personnel must return all Confidential Information in their possession.

Likewise, Company Personnel must not disclose a previous employer's Confidential Information to the Company.

The provisions of this Section IV are qualified in their entirety by reference to Section XI.

## V. Conflicts of Interest

Company Personnel have an obligation to act in the best interest of Penguin Solutions. All Company Personnel should endeavor to avoid situations that present a potential or actual conflict between their interests and the interests of Penguin Solutions.

A “conflict of interest” occurs when a person’s private interest interferes in any way, or even appears to interfere, with the interest of Penguin Solutions, including its subsidiaries and affiliates. A conflict of interest may arise when an employee, officer, or director takes an action or has an interest that may make it difficult for him or her to perform his or her work objectively and effectively. Conflicts of interest may also arise when an employee, officer or director (or his or her immediate family member) receives improper personal benefits as a result of the employee’s, officer’s or director’s position at Penguin Solutions.

Conflicts of interest can also occur indirectly. For example, a conflict of interest may arise when Company Personnel is also an officer, a major stockholder, or has a material interest in a company or organization doing business with the Company.

Although it would not be possible to describe every situation in which a conflict of interest may arise, the following are examples of situations that may constitute a conflict of interest:

- Working, in any capacity, for a competitor, customer, or supplier while employed by Penguin Solutions;
- Accepting compensation, gifts of more than modest value, cash or cash equivalents (e.g., gift cards) in any amount, personal discounts (if such discounts are not generally offered to the public), or other benefits as a result of your position at Penguin Solutions from a competitor, vendor, customer or supplier;
- Competing with Penguin Solutions for the purchase or sale of property, products, services, or other interests;
- Having an interest in a transaction involving Penguin Solutions, a competitor, a customer or supplier (other than as an employee, officer or director of Penguin Solutions and not including routine investments in publicly traded companies);
- Receiving a loan or guarantee of an obligation as a result of your position with Penguin Solutions; and
- Directing business to a supplier owned or managed by, or which employs, a relative or friend.

In order to avoid conflicts of interest, Company Personnel must promptly disclose to the Chief Legal Officer any material transaction or relationship that gives, or reasonably could be expected to give, rise

to such a conflict, and the Chief Legal Officer shall notify the Board of any such disclosure. Conflicts of interest involving the Chief Legal Officer or directors shall be disclosed to the Board.

## **VI. Protection and Proper Use of Company Assets**

Protecting Company assets against loss, theft, or other misuse is the responsibility of every employee, officer, and director. Loss, theft, and misuse of Company assets directly impact our profitability. Any suspected loss, misuse, or theft should be reported to a manager/supervisor or the Legal department.

The sole purpose of Penguin Solutions' equipment, vehicles, supplies, and technology is the conduct of our business. They may only be used for Company business consistent with Company guidelines.

## **VII. Corporate Opportunities**

Employees, officers, and directors are prohibited from taking for themselves business opportunities that are discovered through the use of corporate property, information, or position. No employee, officer or director may use corporate property, information, or position for personal gain, and no employee, officer, or director may compete with Penguin Solutions. Competing with Penguin Solutions may involve engaging in the same line of business as Penguin Solutions, or any situation where the employee, officer or director takes away from Penguin Solutions opportunities for sales or purchases of products, services or interests. Employees, officers, and directors owe a duty to Penguin Solutions to advance its legitimate interests when the opportunity to do so arises.

## **VIII. Fair Dealing**

Each employee, officer and director of Penguin Solutions should endeavor to deal fairly with customers, suppliers, competitors, the public and one another at all times and in accordance with ethical business practices. No one should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any other unfair dealing practice. No bribes, kickbacks or other similar payments in any form shall be made directly or indirectly to or for anyone for the purpose of obtaining or retaining business or obtaining any other favorable action. Penguin Solutions and any employee, officer or director involved may be subject to disciplinary action as well as potential civil or criminal liability for violation of this Code.

Occasional business gifts to, or entertainment of, non-government employees in connection with business discussions or the development of business relationships are generally deemed appropriate in the conduct of Company business. However, these gifts should be given infrequently and their value should be modest. Gifts or entertainment in any form that would likely result in a feeling or expectation of personal obligation should not be extended or accepted.

Practices that are acceptable in a commercial business environment may be against the law or the policies governing federal, state or local government employees. Therefore, no gifts or business entertainment of any kind may be given to any government employee without the prior approval of a manager/supervisor or the Legal department.

Except in certain limited circumstances, the Foreign Corrupt Practices Act (“FCPA”) prohibits giving anything of value directly or indirectly to any “foreign official” for the purpose of obtaining or retaining business. When in doubt as to whether a contemplated payment or gift may violate the FCPA, contact a manager/supervisor or the Legal department before taking any action.

## **IX. Quality of Public Disclosures**

Penguin Solutions has a responsibility to provide full and accurate information in our public disclosures, in all material respects, about Penguin Solutions’ financial condition and results of operations. Our reports and documents filed with or submitted to the SEC and our other public communications must include full, fair, accurate, timely and understandable disclosure, and Penguin Solutions has established a Disclosure Committee consisting of senior management to assist in monitoring such disclosures.

To ensure the Company meets this standard, all Company Personnel (to the extent they are involved in the Company’s disclosure process) are required to maintain familiarity with the disclosure requirements, processes and procedures applicable to the Company commensurate with their duties. Company Personnel are prohibited from knowingly misrepresenting, omitting or causing others to misrepresent or omit, material facts about the Company to others, including the Company’s independent auditors, governmental regulators and self-regulatory organizations.

## **X. Compliance with This Code and Reporting of Any Illegal or Unethical Behavior**

All employees, directors, and officers are expected to comply with all of the provisions of this Code. The Code will be strictly enforced and violations will be dealt with immediately, including by subjecting persons to corrective and/or disciplinary action such as dismissal or removal from office. Violations of the Code that involve illegal behavior will be reported to the appropriate authorities.

Situations which may involve a violation of ethics, laws, rules, regulations or this Code may not always be clear and may require the exercise of judgment or the making of difficult decisions. Company Personnel should promptly report any concerns about a violation of ethics, laws, rules, regulations or this Code to their supervisors/managers or the Legal department or, in the case of accounting, internal accounting controls or auditing matters, the Audit Committee of the Board. Interested parties may also communicate directly with Penguin Solutions’ non-management directors through its Chair or the Audit Committee.

Any concerns about a violation of ethics, laws, rules, regulations, or this Code by any senior executive officer or director should be reported promptly to the Chief Legal Officer, and the Chief Legal Officer will notify the Board of any violation. Any such concerns involving the Chief Legal Officer should be reported to the Board. Reporting of such violations may also be done anonymously through our anonymous reporting website (<https://penguinsolutions.ethicspoint.com>) or in writing to our Chief Legal Officer as described in our Policy for Reporting Concerns. An anonymous report should provide enough information about the incident or situation to allow Penguin Solutions to investigate properly. If concerns or complaints include a request for confidentiality, including keeping an identity anonymous, Penguin Solutions will endeavor to protect this confidentiality, subject to applicable law, regulation, or legal proceedings.

Penguin Solutions encourages all employees, officers and directors to report any suspected violations promptly and intends to thoroughly investigate any good faith reports of violations. Penguin Solutions will not tolerate any kind of retaliation for reports or complaints regarding misconduct that were made in good faith. Open communication of issues and concerns by all employees without fear of retribution or retaliation is vital to the successful implementation of this Code. All employees, officers, and directors are required to cooperate in any internal investigations of misconduct and unethical behavior.

Penguin Solutions recognizes the need for this Code to be applied equally to everyone it covers. The Chief Legal Officer of Penguin Solutions will have primary authority and responsibility for the enforcement of this Code, subject to the supervision of the Board, or, in the case of accounting, internal accounting controls or auditing matters, the Audit Committee of the Board, and Penguin Solutions will devote the necessary resources to enable the Chief Legal Officer to establish such procedures as may be reasonably necessary to create a culture of accountability and facilitate compliance with this Code. Questions concerning this Code should be directed to the Legal department.

The provisions of this Section X are qualified in their entirety by reference to Section XI.

## **XI. Reporting Violations to a Governmental Agency**

You understand that you have the right to:

- Report possible violations of state or federal law or regulation that have occurred, are occurring, or are about to occur to any governmental agency or entity, or self-regulatory organization;
- Cooperate voluntarily with, or respond to any inquiry from, or provide testimony before any self-regulatory organization or any other federal, state, or local regulatory or law enforcement authority;
- Make reports or disclosures to law enforcement or a regulatory authority without prior notice to, or authorization from, Penguin Solutions; and
- Respond truthfully to a valid subpoena.



You have the right to not be retaliated against for reporting, either internally to Penguin Solutions or to any governmental agency or entity or self-regulatory organization, information which you reasonably believe relates to a possible violation of law. It is a violation of federal law to retaliate against anyone who has reported such potential misconduct either internally or to any governmental agency or entity or self-regulatory organization. Retaliatory conduct includes discharge, demotion, suspension, threats, harassment and any other manner of discrimination in the terms and conditions of employment because of any lawful act you may have performed. It is unlawful for Penguin Solutions to retaliate against you for reporting possible misconduct either internally or to any governmental agency or entity or self-regulatory organization.

Penguin Solutions cannot require you to withdraw reports or filings alleging possible violations of federal, state or local law, or regulation, and Penguin Solutions will not offer you any kind of inducement, including payment, to do so.

Your rights and remedies as a whistleblower protected under applicable whistleblower laws, including a monetary award, if any, may not be waived by any agreement, policy form, or condition of employment, including by a pre-dispute arbitration agreement.

Even if you have participated in a possible violation of law, you may be eligible to participate in the confidentiality and retaliation protections afforded under applicable whistleblower laws, and you may also be eligible to receive an award under such laws.

## **XII. Waivers and Amendments**

Any waiver of the provisions in this Code for directors, executive officers or other senior financial officers may only be granted by the Board in writing and will be disclosed to Penguin Solutions' stockholders, along with the reasons for granting the waiver, as required by law or the rules of Nasdaq. Any waiver of this Code for other employees may only be granted by the Legal department.

## **XIII. Equal Opportunity, Non-Discrimination, and Fair Employment**

Penguin Solutions' policies for recruitment, advancement and retention of employees forbid discrimination on the basis of any criteria prohibited by law, including but not limited to race, sex, and age. Our policies are designed to ensure that employees are treated, and treat each other, fairly and with respect and dignity. In keeping with this objective, conduct involving discrimination or harassment of others will not be tolerated. All employees are required to comply with Penguin Solutions' policy on equal opportunity, non-discrimination and fair employment, copies of which were distributed and are available from the Legal department.



## **XIV. Compliance with Antitrust Laws**

The antitrust laws prohibit agreements among competitors on such matters as prices, terms of sale to customers, and allocating markets or customers. Antitrust laws can be very complex, and violations may subject Penguin Solutions and its employees to criminal sanctions including fines, jail time, and civil liability. If you have any questions, consult the Legal department.

## **XV. Political Contributions and Activities**

Any political contributions made by or on behalf of Penguin Solutions and any solicitations for political contributions of any kind must be lawful and in compliance with Company policies. This Code applies solely to the use of Company assets and is not intended to discourage or prevent individual employees, officers, or directors from making political contributions or engaging in political activities on their own behalf. No one may be reimbursed directly or indirectly by Penguin Solutions for personal political contributions.

## **XVI. Environment, Health, and Safety**

Penguin Solutions is committed to conducting its business in compliance with all applicable environmental and workplace health and safety laws and regulations. Penguin Solutions strives to provide a safe and healthy work environment for our employees and to avoid adverse impact and injury to the environment and communities in which we conduct our business. Achieving this goal is the responsibility of all officers, directors, and employees.

## **XVII. No Rights Created**

This Code is a statement of certain fundamental principles, policies and procedures that govern Company Personnel in the conduct of the Company's business. It is not intended to and does not create any rights in any employee, customer, client, visitor, supplier, competitor, stockholder or any other person or entity. It is the Company's belief that the Code is robust and covers most conceivable situations.