

# TERMS OF SERVICE

Effective as of October 10, 2022

Welcome to the Finicast Planning, Business Intelligence, and Collaboration in one Platform (“**Finicast Platform**”)! These Terms of Service (“**Terms**”) of Finicast, Inc. (“**Finicast**,” “**we**,” “**our**,” or “**us**”) are an agreement that describes the rights and responsibilities of each Finicast user (“**User**,” “**you**,” “**your(s)**”).

Specifically, these Terms govern how you may access and use: (i) finicast.com, its subdomains, and any other website where these Terms are posted (collectively, the “**Website**”); (ii) Finicast Platform, which is an online hosted solution; (iii) Finicast’s “**Software**,” meaning, collectively, our browser extensions, mobile applications (“**Mobile App**”), other downloadable apps, application programming interfaces (“**APIs**”), and tools and documentation; and (iv) the services and resources available or enabled via (i) through (iii) (in which (i) through (iv) are each a “**Service**” and, collectively, our “**Services**”).

PLEASE READ THESE TERMS CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION. BY CREATING A FINICAST ACCOUNT (DEFINED BELOW), CLICKING “SUBMIT”, OR THE LIKE INDICATING ACCEPTANCE ELECTRONICALLY, BROWSING THE WEBSITE, DOWNLOADING OR USING ANY OF THE SOFTWARE, OR BY OTHERWISE ACCESSING OR USING THE SERVICES, YOU SIGNIFY THAT YOU HAVE READ, HAVE UNDERSTOOD, AND AGREE TO BE BOUND BY THESE TERMS, AND THAT YOU HAVE READ, HAVE UNDERSTOOD, AND ACKNOWLEDGE OUR PRIVACY POLICY, WHICH IS AVAILABLE AT FINICAST.COM/PRIVACY (“**PRIVACY POLICY**”), WHETHER OR NOT YOU ARE A REGISTERED USER OF THE SERVICES. IF YOU DO NOT AGREE TO THESE TERMS OF SERVICE OR TO ANY OTHER FINICAST POLICY, THEN YOU MUST CEASE ALL USE OF FINICAST PRODUCTS AND REQUEST THAT WE DELETE ANY DATA THEREAFTER BY EMAIL TO CUSTOMERS@FINICAST.COM. WE RESERVE ALL RIGHTS NOT EXPRESSLY GRANTED UNDER THESE TERMS.

If you are an individual and you access or use the Services for a business purpose or on behalf of a company, principal, or other entity, such as your employer (each, together with its affiliates, an “**Organization**”), then: (i) these Terms are an agreement between us and you and us and that Organization; (ii) you represent and warrant that you have the authority to bind that Organization to these Terms (and if you do not have the authority, you may not access or use the Services); (iii) your acceptance of these Terms will bind such Organization to these Terms; (iv) your individual right to access and use the Services may be suspended or terminated (and ownership and administration of your Finicast Account may be transferred) if you cease to be associated with, or cease to use an email address associated with or provisioned by, that Organization; (v) we may disclose information regarding you and your use of the Services with such Organization; (vi) if at any time we are notified that authority or consent by the Organization for you to enter into these Terms or use the Services does not exist or has been withdrawn, we reserve the right to promptly terminate your use of the Services (without any right of refund to the Organization); and (vii) the terms “you” and “your”, as used in these Terms, refer to both you and such Organization. If you sign up for the Services using an email address associated with or provisioned by an Organization, or if an Organization pays fees due in connection with your access to or

use of the Services (or reimburses you for payment of such fees), or otherwise, then we may deem you, in our sole discretion, to be accessing and using the Services on behalf of that Organization.

PLEASE BE AWARE THAT SECTION 14 OF THESE TERMS CONTAINS PROVISIONS GOVERNING HOW ANY DISPUTES BETWEEN US WILL BE RESOLVED. IN PARTICULAR, IT CONTAINS AN ARBITRATION AGREEMENT WHICH WILL, WITH LIMITED EXCEPTIONS, REQUIRE DISPUTES BETWEEN US TO BE SUBMITTED TO BINDING AND FINAL ARBITRATION. UNLESS YOU OPT OUT OF THE ARBITRATION AGREEMENT: (1) YOU WILL ONLY BE PERMITTED TO PURSUE CLAIMS AND SEEK RELIEF AGAINST US ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING; AND (2) YOU ARE WAIVING YOUR RIGHT TO PURSUE CLAIMS AND SEEK RELIEF IN A COURT OF LAW AND TO HAVE A JURY TRIAL.

## 1. Our Service

### 1.1 Eligibility

This policy governs the commercial arrangement entered into by web visitors and users (referred to as “**User**,” “**you**,” or “**yours**”) of certain services and software offerings (together, “**Services**”) provided by Finicast, Inc. (“**Finicast**,” “**we**,” or “**us**”). In order for you to use the Service for a term longer than 6 months, we may require entering into a separate written customer agreement (“**Master Services Agreement**”) with the Organization. The Master Services Agreement will authorize the Organization to provide you access to the Service, subject to the Master Services Agreement and these Terms.

You may use the Services only if you can form a legally binding contract with us (and on behalf of your Organization, as applicable), and only in compliance with these Terms and all applicable local, state, national, and international laws, rules and regulations. To use the Services, you must be at least 13 years old, and in some circumstances even older (please check your local law for the age of digital consent). You represent and warrant that you meet the applicable age requirements and are competent to agree to these Terms, or, if you are unable to form a binding contract under applicable law, you represent and warrant that you have your parent’s or legal guardian’s permission to use the Services, and that your parent or legal guardian is agreeing to these Terms concurrently. If you are a parent or legal guardian of a Finicast User (defined below) who is unable to form a binding contract under applicable law, you are agreeing to these Terms and you are responsible for such Finicast User’s activity on the Services. In our sole discretion, the Services may not be available to any users who were previously removed from a Service.

### 1.2 Access, Restrictions, and Use

Subject to your compliance with these Terms and the Master Services Agreement, you may access and use the Services during the free trial period or longer with the execution of the Master Services Agreement, except as may be limited by your Organization as described above. Except as we otherwise

agree in writing or to the extent a restriction is prohibited by law, you agree not to do, and not to assist, permit or enable any third party or Application (defined below) to do, any of the following:

- a) upload any Restricted Content to the Services (defined below);
- b) disassemble, reverse engineer, decode, or decompile any part of the Services;
- c) use any robot, spider, scraper, data mining tool, data gathering or extraction tool, or any other automated means, to access, collect, copy or record the Services;
- d) copy, rent, lease, sell, loan, transfer, assign, sublicense, resell, distribute, modify, alter, or create derivative works of any part of the Services or any of our Intellectual Property (defined below);
- e) use the Services in a manner that impacts: (i) the stability of our servers; (ii) the operation or performance of the Services or any other user's use of the Services; or (iii) the behavior of other applications using the Services;
- f) use the Services in any manner or for any purpose (including, without limitation, by providing Finicast with access to any Content) that: (i) violates or promotes the violation of any applicable law, regulation, legal requirement, contractual obligation, or right of any person including, but not limited to, intellectual property rights, rights of privacy, or rights of personality; (ii) is fraudulent, false, deceptive, or defamatory; (iii) promotes hatred, violence, or harm against any individual or group; (iv) otherwise may be harmful or objectionable (in our sole discretion) to us, our providers, our suppliers, or our users;
- g) overload, flood, spam, or mail-bomb the Services; or otherwise use the Services in a manner that interferes with or creates an undue burden on a Service, including by sending unsolicited communications, promotions, advertisements, or spam;
- h) use or display the Services in competition with us, to develop competing products or services, for benchmarking or competitive analysis of the Services, or otherwise to our detriment or disadvantage;
- i) attempt to interfere with, compromise the system integrity or security of, or decipher any transmissions to or from, the servers running Finicast, except as previously agreed to in a separate writing by the Organization and Finicast;
- j) transmit viruses, worms, or other software agents through the Services;
- k) impersonate another person or misrepresent your affiliation with a person or entity, hide or attempt to hide your identity, or otherwise use the Services for any invasive or fraudulent purpose;
- l) share passwords or authentication credentials for the Services, or otherwise circumvent the measures we may use to prevent or restrict access to the Services or enforce limitations on use of the Services; or
- m) identify or refer to us or the Services in a manner that could reasonably imply an endorsement, relationship, or affiliation with or sponsorship between you or a third party and us, other than your permitted use of the Services under these Terms, without our express written consent.

### 1.3 Finicast Accounts

Your account on the Services (your **"Finicast Account"**) gives you access to the services and functionality that we may establish and maintain from time to time. We may maintain different types of Finicast Accounts for different types of users (each such user, a **"Finicast User"**). You acknowledge that you do not own your Finicast Account.

You may not use another user's Finicast Account without such user's permission. When registering with the Services, you must: (a) provide true, accurate, current and complete information about yourself and (b) maintain and promptly update your registration or profile data to keep it true, accurate, current and complete. You are solely responsible for the activity that occurs on your Finicast Account, and you must keep your Finicast Account password(s) strong and secure. You agree to notify us immediately of any breach of security or unauthorized use of your Finicast Account. Any individual with administrator-level access to your Finicast Account can modify your Finicast Account settings. We will not be liable for any losses caused by any unauthorized use of your Finicast Account, or for any changes to your Finicast Account, including your ability to access your Finicast Account or Your Content (defined below), made by any individual with administrator-level access to your Finicast Account.

You may control certain aspects of your Finicast Account profile and how you interact with the Services by changing the settings in your settings page. By providing us with your email address, you consent to our using the email address to send you Service-related notices, including any notices required by law, in lieu of communication by postal mail. We may also use your email address to send you other marketing or advertising messages, such as changes to features of the Services and special offers. If you do not want to receive such email messages, you may opt out or change your preferences by contacting Finicast Support at [support@finicast.com](mailto:support@finicast.com) or by clicking the unsubscribe link within each marketing or advertising message. Opting out will not prevent you from receiving Service-related notices.

## 1.4 Your Content

As between us and you, you (or your licensors) will own any and all information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly, from you (or on your behalf) by or through Finicast ("**Your Content**"). For an Organizational account, we may assume, in our sole discretion, that all of Your Content belongs to that Organization.

You (on behalf of yourself and your Organization, if applicable, and your other licensors) grant, and you represent and warrant that you have all rights necessary to grant, us an irrevocable, transferable, sublicensable (through multiple tiers), fully paid, royalty-free, and worldwide right and license to use, copy, store, modify, and display Your Content: (i) to provide, maintain, and improve the Services; (ii) to perform such other actions as authorized by you in connection with your use of the Services; and (iii) for any other purpose consistent with the Privacy Policy.

If you are an individual using the Services on behalf of an Organization and are collaborating with other employees or other individuals who have access to Your Content under your Finicast Account, or if you share Your Content with other individuals within or outside of such Organization, the content on your Finicast Account that you make available to such other individuals (as well as other information, such as the names and contact information of other individuals who have access to your workspace(s) or Your Content within the Services) will be visible, accessible, and, depending on their designated level of access, editable by such individuals.

You are solely responsible for managing Your Content within your Finicast Account and you can remove Your Content from your Finicast Account by deleting it. For assistance or information about deletion, you may send a request to [customers@finicast.com](mailto:customers@finicast.com).

In connection with Your Content, you represent and warrant that: (i) you have all necessary rights, licenses and consents to provide, receive, access and/or use Your Content and any other content you

provide, receive, access and/or use through or in connection with the Services; (ii) Your Content does not and will not contain any social security numbers or other government-issued identification numbers, protected health information subject to the Health Insurance Portability and Accountability Act (HIPAA) or other information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional; health insurance information; biometric information; passwords for online accounts; credentials to any financial accounts; tax return data; credit reports or consumer reports; any payment card information subject to the Payment Card Industry Data Security Standard; information subject to the Gramm-Leach-Bliley Act, Fair Credit Reporting Act or the regulations promulgated under either such law; information subject to restrictions under Applicable Data Protection Laws (defined below) governing personal information of children, including, without limitation, all information about children under thirteen (13) years of age; or any information that falls within any special categories of data (as defined in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016) ("**Restricted Content**"); and (iii) Your Content and our use thereof as contemplated by these Terms and the Services will not violate any law or infringe any rights of any third party, including but not limited to any intellectual property rights and privacy rights.

We take no responsibility and assume no liability for Your Content. You shall be solely responsible for Your Content and the consequences of posting it, publishing it, sharing it, deleting or otherwise making it available on the Services. You shall be solely responsible and indemnify us for Your Content.

## 1.5 Licenses

To the extent you receive our Services, subject to your compliance with these Terms and the terms of the Master Services Agreement, during the term of the Master Services Agreement, we grant to you a non-exclusive, non-transferable, non-sublicensable right and license to use our Services solely as reasonably necessary for your use of the Services in accordance with these Terms. Some Software may be offered under open source licenses that we will make available to you upon your request. There may be provisions in the open source licenses that expressly override some of these terms.

Subject to your compliance with these Terms and the terms of the Master Services Agreement, during the term of the Master Services Agreement, Finicast grants you a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to download, install and use a copy of the App on a single mobile device that you own or control and to run such copy of the App solely for your own personal or internal business purposes. Furthermore, with respect to any App accessed through or downloaded from the Apple App Store (an "**App Store Sourced Application**"), you will only use such App Store Sourced Application (a) on an Apple-branded product that runs iOS (Apple's proprietary operating system) and (b) as permitted by the "Usage Rules" set forth in the Apple App Store Terms of Service. Notwithstanding the first sentence in this section, with respect to any Mobile App accessed through or downloaded from the Google Play store (a "**Google Play Sourced Application**"), you may have additional license rights with respect to use of such Google Play Sourced Application on a shared basis within your designated family group.


## 1.6 Service Changes, Suspension, and Termination

These Terms commence on the date when you accept (as described in the preamble above) and remain in full force and effect while you use the Services during the term of the Master Services Agreement,

unless terminated earlier in accordance with these Terms. We may change the Services, stop providing the Services or features of the Services to you or to our users generally, or create usage limits for the Services. We may permanently or temporarily terminate or suspend your access to the Services without notice and liability, without cause or for any reason, including if in our sole determination you violate any provision of these Terms. You agree that all terminations for cause shall be made in our sole discretion and that we shall not be liable to you or any third party for any termination of your Finicast Account or license. These Terms, including the license to use the Services granted herein will terminate immediately upon termination or expiration of the Master Services Agreement for any reason. Upon termination of these Terms, your right to use the Services will automatically terminate immediately. You understand that any termination of your assent to these Terms or any other agreement with Finicast will involve deletion of Your Content associated therewith from our databases, if any, within 60 days of our actual notice of termination. Upon termination, all provisions of these Terms which by their nature should survive, shall survive termination of this license, including without limitation, ownership provisions, warranty disclaimers, and limitation of liability.

## 2. Our Intellectual Property

You acknowledge and agree that the Services and all materials and content displayed or made available on or through the Services, and all software, algorithms, code, technology and intellectual property underlying and included in or with the Services, and all intellectual property rights therein and thereto throughout the world (collectively and individually, our “**Intellectual Property**”), are our (or our licensors’ as applicable) sole and exclusive property. Except as explicitly provided herein, nothing in these Terms will be deemed to create a license in or under any intellectual property rights, and you agree not to access, sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any of our Intellectual Property.

[Finicast]  **FINICAST** and all related graphics, logos, service marks and trade names used on or in connection with the Services are the trademarks of Finicast and may not be used without permission in connection with your or any third-party products or services. Other trademarks, service marks and trade names that may appear on or in the Service are the property of their respective owners.

You may choose to, or we may invite you to submit, comments, suggestions, enhancement requests, recommendations or other feedback or ideas about the Services, including without limitation about how to improve the Services or our products (“**Feedback**”). You hereby grant to Finicast a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Services any such Feedback. Upon your written request to [legal@finicast.com](mailto:legal@finicast.com), Finicast will not identify you as the source of any Feedback. You further acknowledge that, by acceptance of your submission, we do not waive any rights to use similar or related ideas previously known to us, or developed by our employees, or obtained from sources other than you.



### 3. Data Processing

Finicast Services involve the processing of data on behalf of users, who own such data. Such processing is governed by the Data Processing Addendum herein incorporated by reference and published at [finicast.com/dpa](https://finicast.com/dpa).

### 4. Charges and Payment

Unless otherwise specified by us in writing, the Service fees are payable by the Organization and are governed by the Master Services Agreement and/or corresponding Order Form.

### 5. Privacy

We care about the privacy of our users. By using the Services, you acknowledge that we may collect, use, and disclose your personal information and aggregate and/or anonymized data as set forth in our Privacy Policy, available at [finicast.com/privacy](https://finicast.com/privacy), and acknowledge that you may have your personal information collected, used, transferred to and processed in the United States. If your use of the Services pursuant to an Master Services Agreement requires us to process any information that constitutes “personal data,” “personal information,” or “personally identifiable information” as those terms are defined by the privacy, data protection and data security laws and regulations (“**Applicable Data Protection Laws**”), or information of a similar character regulated thereby (collectively, “**Personal Data**”), we will do so at all times in accordance with the Data Processing Addendum (“**DPA**”) which is incorporated into these Terms by reference. By continuing to use Finicast Products, you agree that you have full responsibility and determination in the use of Personal Data, and that you provide any Personal Data subject to these Terms and to the DPA.

### 6. Security

We have implemented commercially reasonable technical and organizational measures designed to secure Your Content from accidental loss and from unauthorized access, use, alteration or disclosure. However, we cannot guarantee that unauthorized third parties will never be able to defeat those measures or use Your Content for improper purposes. You understand that Internet technologies have the inherent potential for disclosure. You acknowledge that you provide Your Content at your own risk. You can learn more about our security practices at [finicast.com/resources/security](https://finicast.com/resources/security).

## 7. DMCA Notice

We respect artist and content owner rights, and it is our policy to respond to alleged infringement notices that comply with the Digital Millennium Copyright Act of 1998 ("**DMCA**"). It is Finicast's policy to terminate membership privileges of any user who repeatedly infringes copyright upon prompt notification to Finicast by the copyright owner or the copyright owner's legal agent.

Without limiting the foregoing, if you believe that your copyrighted work, including any material on any dashboard, report or form made publicly available, has been copied in a way that constitutes copyright infringement and is accessible via the Services, please notify our copyright agent as set forth in the DMCA. For your complaint to be valid under the DMCA, you must provide all of the following information in writing:

- a) An electronic or physical signature of a person authorized to act on behalf of the copyright owner;
- b) Identification of the copyrighted work that you claim has been infringed;
- c) Identification of the material that is claimed to be infringing and where it is located on the Services;
- d) Information reasonably sufficient to permit us to contact you, such as your address, telephone number, and, e-mail address;
- e) A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or law; and
- f) A statement, made under penalty of perjury, that the above information is accurate, and that you are the copyright owner or are authorized to act on behalf of the owner.

The above information must be submitted to our DMCA Agent using the following contact information:

Finicast, Inc. (Attn: Copyright Agent)  
Address: 1850 Gateway Drive, Suite 150, San Mateo, CA 94404  
Email: [legal@finicast.com](mailto:legal@finicast.com)

UNDER FEDERAL LAW, IF YOU KNOWINGLY MISREPRESENT THAT ONLINE MATERIAL IS INFRINGING, YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION FOR PERJURY AND CIVIL PENALTIES, INCLUDING MONETARY DAMAGES, COURT COSTS, AND ATTORNEYS' FEES.

Please note that the preceding requirements do not constitute legal advice. In accordance with the DMCA and other applicable law, we have adopted a policy of terminating, in appropriate circumstances, users who are deemed to be repeat infringers. We may also at our sole discretion limit access to the Services and/or terminate the Finicast Accounts of any Finicast Users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.



## 8. Third-Party Services

### 8.1 Third Party Services

OUR SERVICES MAY CONTAIN LINKS TO THIRD-PARTY MATERIALS THAT ARE NOT OWNED OR CONTROLLED BY US, WE MAY REFER YOU TO CERTAIN THIRD PARTIES WHO PROVIDE INDEPENDENT SERVICES RELATING TO OR SUPPORTING YOUR USE OF OUR SERVICES, AND CERTAIN FUNCTIONALITY OF OUR SERVICES MAY REQUIRE YOUR USE OF, OR MAY BE COMPATIBLE WITH, THIRD-PARTY SERVICES, SITES, INFORMATION, MATERIALS, PRODUCTS, OR SERVICES (EACH, A “**THIRD-PARTY SERVICE**”). IF YOU USE A THIRD-PARTY SERVICE, YOU ARE SUBJECT TO AND AGREE TO THE THIRD PARTY’S TERMS OF SERVICE (OR OTHER APPLICABLE TERMS AND CONDITIONS) AND PRIVACY POLICY MADE AVAILABLE BY OR VIA THE THIRD-PARTY SERVICE. WE DO NOT ENDORSE OR ASSUME ANY RESPONSIBILITY FOR ANY SUCH THIRD-PARTY SERVICE (EVEN WHERE WE PERFORM A REVIEW OF THE FUNCTIONALITY OR SECURITY OF SUCH A THIRD-PARTY SERVICE, SUCH AS AN APPLICATION DEVELOPED BY A THIRD-PARTY. IF YOU ACCESS A THIRD-PARTY SERVICE FROM OR WITH THE SERVICES OR SHARE YOUR CONTENT ON OR THROUGH ANY THIRD-PARTY SERVICE, YOU DO SO AT YOUR OWN RISK, AND YOU UNDERSTAND THAT THESE TERMS AND OUR PRIVACY POLICY DO NOT APPLY TO YOUR USE OF SUCH SERVICES. YOU EXPRESSLY RELIEVE US FROM ANY AND ALL LIABILITY ARISING FROM YOUR USE OF ANY THIRD-PARTY SERVICE.

A LIST OF AUTHORIZED SUBPROCESSORS THAT FINICAST USES CURRENTLY IS PUBLISHED AT [FINICAST.COM/SUBPROCESSORS](https://finicast.com/subprocessors).

### 8.2 App Store Sourced Application

You acknowledge and agree that the availability of Finicast products via mobile application or extensions purchased through a marketplace (“**App Store Sourced Application**”) will be dependent on the third party from whom you received the App license, e.g., the Apple App Store or Google Play (each, a “**Marketplace**”). You acknowledge that the Agreement is between you and Finicast and not with the Marketplace. Finicast, not the Marketplace, is solely responsible for the Services, including the App Store Sourced Application, the content thereof, maintenance, support services, and warranty therefor, and addressing any claims relating thereto (e.g., product liability, legal compliance or intellectual property infringement). In order to use the App Store Sourced Application, you must have access to a wireless network, and you agree to pay all fees associated with such access. You also agree to pay all fees (if any) charged by the App Store in connection with the Services, including the App Store Sourced Application. You agree to comply with, and your license to use the App Store Sourced Application is conditioned upon your compliance with all terms of agreement imposed by the applicable App Store when using any Service, including the App Store Sourced Application. You acknowledge that the Marketplace (and its subsidiaries) are third-party beneficiaries of the Agreement and will have the right to enforce it.

### 8.3 Accessing and Downloading the App from the Apple App Store

The following applies to any App Store Sourced Application accessed through or downloaded from the Apple App Store:

(a) You acknowledge and agree that (i) the Agreement is concluded between you and Finicast only, and not Apple, and (ii) Finicast, not Apple, is solely responsible for the App Store Sourced Application and content thereof. Your use of the App Store Sourced Application must comply with the App Store Terms of Service.

(b) You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App Store Sourced Application.

(c) In the event of any failure of the App Store Sourced Application to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the App Store Sourced Application to you and to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App Store Sourced Application. As between Finicast and Apple, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of Finicast.

(d) You and Finicast acknowledge that, as between Finicast and Apple, Apple is not responsible for addressing any claims you have or any claims of any third party relating to the App Store Sourced Application or your possession and use of the App Store Sourced Application, including, but not limited to: (i) product liability claims; (ii) any claim that the App Store Sourced Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

(e) You and Finicast acknowledge that, in the event of any third-party claim that the App Store Sourced Application or your possession and use of that App Store Sourced Application infringes that third party's intellectual property rights, as between Finicast and Apple, Finicast, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by the Agreement.

(f) You and Finicast acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of the Agreement as related to your license of the App Store Sourced Application, and that, upon your acceptance of the terms and conditions of the Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce the Agreement as related to your license of the App Store Sourced Application against you as a third-party beneficiary thereof.

(g) Without limiting any other terms of the Agreement, you must comply with all applicable third-party terms of agreement when using the App Store Sourced Application.

## 9. Indemnity

You agree to defend, indemnify and hold us and our affiliates, agents, suppliers or licensors (and our and their employees, contractors, agents, officers and directors) (each, a **"Finicast Party"** and collectively, the **"Finicast Parties"**) harmless from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your access to or use of the Services; (ii) your violation of any aspect of these Terms, including without limitation your breach of any of your representations and warranties; (iii) your violation of any third-party right, including

without limitation any right of privacy or intellectual property rights; (iv) your violation of any applicable law, rule or regulation; (v) Your Content, including without limitation any misleading, false, or inaccurate information in Your Content; (vi) your willful misconduct; or (vii) any third party's access to or use of the Services with your username(s), password(s) or other security code(s). Finicast reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you agree to fully cooperate with Finicast in asserting any available defenses. This provision does not require you to indemnify any of the Finicast Parties for any unconscionable commercial practice by such party or for such party's fraud, deception, false promise, misrepresentation or concealment, or suppression or omission of any material fact in connection with any Services provided hereunder. You agree that the provisions in this section will survive any termination of your Finicast Account, these Terms, the Master Services Agreement and/or your access to the Services.

## 10. No Warranty

OUR SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. USE OF OUR SERVICES IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OUR SERVICES ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR THROUGH OUR SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. WITHOUT LIMITING THE FOREGOING, WE, OUR SUBSIDIARIES, OUR AFFILIATES, AND OUR LICENSORS DO NOT WARRANT THAT ANY CONTENT ON OUR SERVICES IS ACCURATE, RELIABLE OR CORRECT; THAT OUR SERVICES WILL MEET YOUR REQUIREMENTS; THAT OUR SERVICES WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT OUR SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR MOBILE DEVICE OR LOSS OF DATA THAT RESULTS FROM YOUR USE OF OUR SERVICES OR ANY DOWNLOAD OF CONTENT THROUGH THE USE OF OUR SERVICES. FEDERAL LAW, SOME STATES OR PROVINCES AND OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION AND LIMITATIONS OF CERTAIN IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. THESE TERMS GIVE YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY BY JURISDICTION. THE DISCLAIMERS AND EXCLUSIONS UNDER THESE TERMS WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## 11. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL WE OR OUR AFFILIATES, AGENTS, SUPPLIERS OR LICENSORS (OR OUR OR THEIR EMPLOYEES, CONTRACTORS, AGENTS, OFFICERS OR DIRECTORS) BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT

LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, ARISING OUT OF OR RELATING TO THE USE OF, OR INABILITY TO USE, OUR SERVICES. UNDER NO CIRCUMSTANCES WILL WE BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF OUR SERVICES OR YOUR FINICAST ACCOUNT OR THE INFORMATION CONTAINED THEREIN.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE ASSUME NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO OR USE OF OUR SERVICES; (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN; (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM OUR SERVICES; (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH OUR SERVICES BY ANY THIRD PARTY; (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH OUR SERVICES; AND/OR (VII) YOUR DATA OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY.

IN NO EVENT WILL WE OR OUR AFFILIATES, AGENTS, SUPPLIERS OR LICENSORS (OR OUR OR THEIR EMPLOYEES, CONTRACTORS, AGENTS, OFFICERS OR DIRECTORS) BE LIABLE TO YOU FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AMOUNT (IN THE AGGREGATE) OF THE FEES RECEIVED BY FINICAST FROM THE ORGANIZATION FOR YOUR LICENSE TO THE SERVICES OR \$100.00, WHICHEVER IS GREATER.

THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. THE DISCLAIMERS, EXCLUSIONS, AND LIMITATIONS OF LIABILITY UNDER THIS AGREEMENT WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## 12. Confidentiality

### 12.1 Confidential Information

From time to time, either party to these Terms (the “**Disclosing Party**”) may disclose or make available to the other (the “**Receiving Party**”) non-public, proprietary, or confidential information of the Disclosing Party (“**Confidential Information**”). Confidential Information includes any information that reasonably

should be understood to be confidential given the nature of the information and the circumstances of disclosure, including non-public business, product, technology and marketing information. Confidential Information does not include any information that: (i) is or becomes generally available to the public other than as a result of the Receiving Party's breach of this confidentiality section; (ii) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was in the Receiving Party's possession prior to the Disclosing Party's disclosure thereof; or (iv) was or is independently developed by the Receiving Party without using any of the Disclosing Party's Confidential Information.

## 12.2 Protection and Use of Confidential Information

The Receiving Party shall: (i) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially-reasonable degree of care; (ii) only use the Disclosing Party's Confidential Information, and only permit it to be accessed or used, for the purpose of exercising its rights or performing its obligations under these Terms, for the purpose of exploring a business relationship (or changes to the business relationship) between the parties, or for any other purpose consistent with the Privacy Policy; and (iii) not disclose any of the Disclosing Party's Confidential Information to any person or entity, except to the Receiving Party's service providers or financial/legal advisors who need to know the Confidential Information and are bound to confidentiality obligations at least as restrictive as those in these Terms.

## 12.3 Compelled Access or Disclosure

If the Receiving Party is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially-reasonable efforts to notify the Disclosing Party of such requirements to afford the Disclosing Party the opportunity to seek, at the Disclosing Party's sole cost and expense, a protective order or other remedy.

## 12.4 Injunctive Relief

Each of the parties to these Terms acknowledges that the other party will be irreparably harmed if Confidential Information of the other is distributed in breach of this Section, and that such other party would not have an adequate remedy at law in the event of such an actual or threatened breach. Therefore, each of the parties agrees that the other party shall be entitled to seek injunctive relief against any actual or threatened breaches of this Section by the other party without the necessity of showing actual damages or showing that monetary damages would not afford an adequate remedy.

## 13. Governing Law

You agree that: (i) we will be deemed solely based in California; and (ii) the Services will be deemed passive that do not give rise to personal jurisdiction over us, either specific or general, in jurisdictions other than California. These Terms will be governed by the internal substantive laws of the State of California, without respect to its conflict of laws principles. The parties acknowledge that these Terms evidence a transaction involving interstate commerce. Notwithstanding the preceding sentences with respect to the substantive law, any arbitration conducted pursuant to Section 14 of these Terms will be governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16). The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. You agree to submit to the personal jurisdiction of the federal and state courts located in San Mateo, California for any actions for which we retain the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of our copyrights, trademarks, trade secrets, patents, or other intellectual property or proprietary rights, as set forth in the Arbitration provision below, including any provisional relief required to prevent irreparable harm. You agree that San Mateo, California is the proper forum for any appeals of an arbitration award or for trial court proceedings in the event that the arbitration provision below is found to be unenforceable.

## 14. Arbitration and Class Action/Jury Trial Waiver

READ THIS SECTION (“**ARBITRATION AGREEMENT**”) CAREFULLY BECAUSE IT REQUIRES THE PARTIES TO ARBITRATE THEIR DISPUTES AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM US.

### 14.1 Arbitration

For any dispute with us, you agree to first contact us at [legal@finicast.com](mailto:legal@finicast.com) and attempt to resolve the dispute with us informally. In the unlikely event that we have not been able to resolve a dispute we have with you after sixty (60) days, we each agree to resolve any claim, dispute, or controversy (excluding any claims for injunctive or other equitable relief as provided below) arising out of or in connection with or relating to these Terms, or the breach or alleged breach thereof (collectively, “**Claims**”), by binding arbitration by JAMS, under the Optional Expedited Arbitration Procedures then in effect for JAMS, except as provided herein. JAMS may be contacted at [www.jamsadr.com](http://www.jamsadr.com). The arbitration will be conducted in San Mateo, California, unless you and we agree otherwise. If you are using Finicast for commercial purposes, each party will be responsible for paying any JAMS filing, administrative and arbitrator fees in accordance with JAMS rules, and the award rendered by the arbitrator will include costs of arbitration, reasonable attorneys’ fees and reasonable costs for expert and other witnesses. If you are an individual using Finicast for non-commercial purposes: (i) JAMS may require you to pay a fee for the initiation of your case, unless you apply for and successfully obtain a fee waiver from JAMS; (ii) the award rendered by the arbitrator may include your costs of arbitration, your reasonable attorney’s fees, and your reasonable costs for expert and other witnesses; and (iii) you may sue in a small claims court of competent jurisdiction without first engaging in arbitration, but this does not absolve you of your commitment to engage in the informal dispute resolution process. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. **NOTHING IN THIS SECTION WILL BE DEEMED AS PREVENTING US FROM SEEKING INJUNCTIVE OR OTHER EQUITABLE**

RELIEF FROM THE COURTS AS NECESSARY TO PREVENT THE ACTUAL OR THREATENED INFRINGEMENT, MISAPPROPRIATION, OR VIOLATION OF OUR DATA SECURITY, INTELLECTUAL PROPERTY RIGHTS OR OTHER PROPRIETARY RIGHTS.

#### 14.2 Authority of Arbitrator

The arbitrator shall have exclusive authority to (a) determine the scope and enforceability of this Arbitration Agreement and (b) resolve any dispute related to the interpretation, applicability, enforceability or formation of this Arbitration Agreement including, but not limited to, any assertion that all or any part of this Arbitration Agreement is void or voidable. The arbitration will decide the rights and liabilities, if any, of you and Finicast. The arbitration proceeding will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages and to grant any non-monetary remedy or relief available to an individual under applicable law, the arbitral forum's rules, and the Agreement (including the Arbitration Agreement). The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and us.

#### 14.3 Class Action/Jury Trial Waiver

WITH RESPECT TO ALL PERSONS AND ENTITIES, REGARDLESS OF WHETHER THEY HAVE OBTAINED OR USED OUR SERVICES FOR PERSONAL, COMMERCIAL OR OTHER PURPOSES, ALL CLAIMS MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION OR OTHER REPRESENTATIVE PROCEEDING. THIS WAIVER APPLIES TO CLASS ARBITRATION, AND, UNLESS WE AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS. YOU AGREE THAT, BY ENTERING INTO THIS AGREEMENT, YOU AND WE ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION, OR OTHER REPRESENTATIVE PROCEEDING OF ANY KIND.

#### 14.4 30-Day Right to Opt Out.

You have the right to opt out of the provisions of this Arbitration Agreement by sending written notice of your decision to opt out to: [legal@finicast.com](mailto:legal@finicast.com), within thirty (30) days after first becoming subject to this Arbitration Agreement. Your notice must include your name and address, your Finicast username (if any), the email address you used to set up your Finicast Account (if you have one), and an unequivocal statement that you want to opt out of this Arbitration Agreement. If you opt out of this Arbitration Agreement, all other parts of this Agreement will continue to apply to you. Opting out of this Arbitration Agreement has no effect on any other arbitration agreements that you may currently have, or may enter in the future, with us.



#### 14.5 Severability.

If any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Arbitration Agreement shall continue in full force and effect.

#### 14.6 Survival of Agreement.

This Arbitration Agreement will survive the termination of your relationship with Finicast.

#### 14.7 Modification.

Notwithstanding any provision in these Terms or the Master Services Agreement to the contrary, we agree that if Finicast makes any future material change to this Arbitration Agreement, you may reject that change within thirty (30) days of such change becoming effective by writing Finicast at the following address: 1850 Gateway Drive, Suite 150, San Mateo, CA 94404.

### 15. U.S. Government Restricted Rights

If the Services are being used by the U.S. Government, the Services are commercial computer software and documentation developed exclusively at private expense, and (i) if acquired by or on behalf of a civilian agency, will be subject to the terms of this computer software license as specified in 48 C.F.R. 12.212 of the Federal Acquisition Regulations and its successors; and (ii) if acquired by or on behalf of units of the Department of Defense ("DOD") will be subject to the terms of this commercial computer software license as specified in 48 C.F.R. 227.7202-3, DOD FAR Supplement and its successors.

### 16. Export Controls

You understand and acknowledge that the Services may be subject to export control laws and regulations. You agree to comply with all applicable export and re-export control and trade and economic sanctions laws, including the Export Administration Regulations maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC), and the International Traffic in Arms Regulations maintained by the U.S. State Department. Neither you, nor any person to which you make the Services available or that is acting on your behalf, or, if you are an Organization, any of your subsidiaries, or any of your or their directors,

officers or employees, or any person owning 50% or more of your equity securities or other equivalent voting interests, is (i) a person on the List of Specially Designated Nationals and Blocked Persons or any other list of sanctioned persons administered by OFAC or any other governmental entity, or (ii) a national or resident of, or a segment of the government of, any country or territory for which the United States maintains trade and economic sanctions or embargoes.

## 17. Publicity Rights

We may identify you as a Finicast customer in our promotional materials. We will promptly stop doing so upon your request sent to [customers@finicast.com](mailto:customers@finicast.com).

## 18. General

### 18.1 Assignment

These Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by you without our prior express written consent, but may be assigned by us without restriction. Any attempted transfer or assignment in violation hereof will be null and void.

### 18.2 Notification Procedures and Changes to these Terms

We may provide notifications, whether such notifications are required by law or are for marketing or other business-related purposes, to you via email notice, written or hard copy notice, or through posting of such notice on our website, as we determine in our sole discretion. We reserve the right to determine the form and means of providing notifications to our users, provided that you may opt out of certain notifications as required under applicable laws or as described in these Terms or our Privacy Policy. We are not responsible for any automatic filtering you or your network provider may apply to email notifications we send to the email address you provide us.

We may, in our sole discretion, modify or update these Terms from time to time, and so you should review this page periodically. When we change these Terms in a material manner, we will update the 'last modified' date at the top of this page and notify you that material changes have been made to these Terms. These Terms apply to and govern your access to and use of our Services effective as of the start of your access to or use of our Services, even if such access or use began before publication of these Terms. Your continued use of Finicast after any such change constitutes your acceptance of the new Terms of Service. If you do not agree to any part of these Terms or any future Terms of Service, do not use or access (or continue to access) Finicast.

### 18.3 Force Majeure

Finicast shall not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, pandemics, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

### 18.4 Notice

Where Finicast requires that you provide an e-mail address, you are responsible for providing Finicast with your most current e-mail address. In the event that the last e-mail address you provided to Finicast is not valid, or for any reason is not capable of delivering to you any notices required/ permitted by the Agreement, Finicast's dispatch of the e-mail containing such notice will nonetheless constitute effective notice. You may give notice to Finicast at the following address: 1850 Gateway Drive, Suite 150, San Mateo, CA 94404. Such notice shall be deemed given when received by Finicast by letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail at the above address.

### 18.5 Entire Agreement/Severability

These Terms, together with any amendments, documents incorporated by reference, and additional agreements you may enter into with us in connection with the Services, will constitute the entire agreement between you and us concerning the Services. None of our employees or representatives are authorized to make any modification or addition to these Terms. Any statements or comments made between you and any of our employees or representatives are expressly excluded from these Terms and will not apply to you or us or your use of the Services. If any provision of these Terms is deemed invalid by a court of competent jurisdiction, the invalidity of such provision will not affect the validity of the remaining provisions of these Terms, which will remain in full force and effect, except that in the event of unenforceability of the universal Class Action/Jury Trial Waiver, the entire arbitration agreement will be unenforceable.

### 18.6 No Waiver

No waiver of any term of these Terms will be deemed a further or continuing waiver of such term or any other term, and our failure to assert any right or provision under these Terms will not constitute a waiver of such right or provision.

### 18.7 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 Services of the California Department of Consumer Affairs by contacting them in writing at 1625 North Market Blvd., Suite N 112 Sacramento, CA 95834, or by telephone at (800) 952-5210 or (916) 445-1254.

## 18.8 Contact

If you have any questions about these Terms or other legal documents incorporated by reference, please contact us at [legal@finicast.com](mailto:legal@finicast.com).