

CustomFin.com - Mobile Application and Website Terms of Use

Last update: July 30, 2022

1. Acceptance of the Terms of Use

By accessing or using any Custom Financing Solutions LLC website (individually and collectively, the “Website”) and/or mobile app (individually and collectively, the “Mobile Application”), or other systems maintained by us and/or our affiliates (collectively, “CustomFin”, “we”, “us”, “our”, or “System”), you (the “User” or “you”), whether you are

- a. a consumer seeking financing (a “Customer”),
- b. an individual employee or other representative (a “Client Representative”) of a business (a “Client”) that provides, products and/or services that may be financed through our System,
- c. an employee or other representative (a “Financier Representative”) of a financing source (a “Financier”) that may provide financing for a Customer’s purchase of a product and/or service from a Client or another business, or
- d. an employee or representative of CustomFin or one or more of its affiliates (a “CF Representative”), confirm that you have read, understand, and agree to be bound by these terms of use (“Terms of Use”), regardless of whether you or any Customer referred by you to this Website or Mobile Application receives, or the Financier you are employed by or represent provides, any financing through the CustomFin Program.

The Website, the Mobile Application and all associated pages and services that you can access on the Website and the Mobile Application and all software therein are collectively referred to as the “System.” CustomFin provides a System to help match Customers who are looking to obtain a loan to purchase certain product and/or service with Financiers that may or may not be willing to provide said loans (“CustomFin Program”).

CustomFin is not a lender or a broker. CustomFin is a third-party technology vendor who supplies a software solution to service providers, lenders and/or brokers. CustomFin does not approve or deny a borrower’s ability to obtain a loan nor does CustomFin make any decisions regarding the borrower’s ability to obtain a loan from a lender/broker. Any information provided through CustomFin is not an application for a loan from CustomFin. CustomFin makes no representations of any rates, points, or loan programs offered through lenders and brokers. Any issues related to money, payments or approvals is between the borrower and the lender/broker. Any information submitted through CustomFin is for the purpose of obtaining additional information regarding a potential loan provided through a third-party lender/broker.

CustomFin does not guaranty the accuracy of any information transmitted on, through, or by its System, nor does CustomFin itself lend money or provide any products or services that may be financed through a loan made using the CustomFin Program. While CustomFin permits Clients that provide certain products and/or services to refer Customers to the System, CustomFin is not responsible for any actions by a Client or Client Representative or any pricing decisions made by a Client in pricing its products and/or services. CustomFin *does not* take formal mortgage applications (commonly known as a 1003), nor does CustomFin permit any use of its System for the purpose of obtaining or offering a mortgage. You further understand that CustomFin may also use any information you or your Client Representative provides about you through the System in any manner consistent with terms below and its Privacy Policy.

CustomFin requires that you read the entirety of the Terms of Use carefully. In addition, CustomFin directs particular attention to Section 10, which broadly authorizes CustomFin to use and share your information with third parties, in addition to the Financiers and the Clients, and Sections 15 – 17, which include binding provisions imposing a limitation on liability, and provisions providing for choice of law, venue, jurisdiction, and mandatory and binding alternative dispute resolution.

In addition to these Terms of Use, you may enter into other agreements with us or others that will govern use of the Custom Fin Program or other services offered on behalf of the Clients, Financiers and others through, or as part of the CustomFin Program. If there is any contradiction between any term of these Terms of Use and the terms of another agreement you enter into applicable to specific aspects of the CustomFin Program or other services offered or made available through the CustomFin Program, the more stringent terms, as determined by us, shall take precedence.

If you are unwilling to be bound by these Terms of Use, do not access or use the System, including using the “Find a Pro” service.

Please be aware that Section 17 of these Terms of Use contains provisions that govern how claims that you and CustomFin have against each other are resolved. In particular, it contains an arbitration agreement which will, with limited exceptions, require you to submit claims that you have against CustomFin to binding and final arbitration. unless you opt out of the arbitration agreement in Section 17 of these Terms:

- a. you will only be permitted to pursue claims and seek relief against CustomFin on an individual basis, not as a plaintiff or class member in any class or representative action or proceeding; and
- b. you are waiving your right to seek relief in a court of law and to have a jury trial on your claims. the arbitration provisions set forth in section 17 of these terms could affect your right to participate in pending class action litigation.

Please see Section 17 for more information regarding these arbitration provisions, including the arbitration provisions’ impact on the pending class litigation and how to opt out of arbitration. The Terms of Use limit the remedies that may be available to you in the event of a dispute.

In these Terms of Use, unless the context otherwise requires, (1) words of the masculine gender mean and include correlative words of the feminine and neuter genders, (2) words importing the singular number mean and include the plural number and vice versa, and (3) words referring to “persons” means any natural person as well as any entity or organization, any government or any agency or political subdivision of any government.

You acknowledge that

- a. while CustomFin may provide a software applications that assist Clients in setting prices for their products and services, including, without limitation, assuring that the Clients’ cover all direct costs in providing those products and/or services (including any costs associated with the financing those products and/or services), the Clients, in their sole and absolute discretion, set the pricing for their costs and/or services and CustomFin has no control over the prices charged by the Clients for their products and/or services, and
- b. CustomFin will receive compensation from a Financier and/or a Client if a Customer finances a purchase through a loan made by that Financier under the CustomFin Program.

Usage of CustomFin requires following its Terms of Use as well as abiding by all legal requirements necessary for all features enabled in your account. For example, if Finance Manager feature is enabled, you agree your company has and uses a universal credit application to submit applications to CustomFin with the customer’s permission, and that you keep the originally-signed applications available upon request by CustomFin and/or CustomFin’s partners, which may include financial institutions and credit bureaus for up to two calendar years.

2. Changes to these Terms of Use

By accessing our System and/or utilizing our CustomFin Program, you acknowledge that we have the right to revise and amend these Terms of Use without prior notice. We may notify you of any changes to these Terms of Use through the System or the CustomFin Program (individually and collectively, the “Custom Fin

System”). Please refer back to the Terms of Use regularly. Your continued use of the CustomFin System following our posting of any such changes will mean that you accept such changes.

3. Mobile Application

If you have elected to download our Mobile Application, we hereby grant you a limited, non-transferable, revocable license to use the object code of such software within the Mobile Application on any mobile device that you own or control that

- a. such Mobile Application is authorized to be operated on (as determined by us in our sole discretion), and
- b. is permitted for download of the Mobile Application by this Section 3.

The Mobile Application is licensed, not sold, to you for use only under the terms of these Terms of Use. CustomFin reserves all rights, title, and interest not expressly granted to you. Nothing herein allows you to use the Mobile Application on a device that you do not own or are not authorized to control. Furthermore, with respect to any Mobile Application accessed through or downloaded from an app store such as Google’s Play Store or Apple’s App Store (an “App Store Sourced Application”), you will only use the App Store Sourced Application:

- a. on a product that runs the operating system for which it was intended, and
- b. as permitted by the “Usage Rules” set forth in the corresponding App Store.

Use of the Mobile Application from a third-party App Store is also subject to the provisions of Section 12 (Third Party Links & App Store).

4. The CustomFin System is for Use by Individuals 18 Years of Age and Older

The CustomFin System is intended solely for natural persons who are eighteen (18) years of age or older, and any registration by, use of, or access to the CustomFin System by any person under 18 years of age is unauthorized and in violation of these Terms of Use. We may terminate your use of the CustomFin System without notice if we believe you are less than 18 years old. By using the CustomFin System, you represent and warrant that you are a natural person, you are 18 years of age or older, and that you agree to and will abide by all of the terms and conditions of these Terms of Use.

5. CustomFin System Use Restrictions

Without our prior written consent, you may not:

- a. Use any automated means to access the System or collect any information from the CustomFin System (including, without limitation, robots, spiders, scripts, or other automatic devices or programs);
- b. Frame the System in any manner, utilize framing techniques to enclose any content or other proprietary information, place pop-up windows over any System pages, or otherwise affect the display of any pages on the System;
- c. Engage in the practices of “screen scraping,” “database scraping,” or any other activity with the purpose of obtaining content or other information;
- d. Use the CustomFin System in any manner that violates applicable law or that could alter, damage, disable, overburden, or impair the CustomFin System or interfere with any other party’s use and enjoyment of the CustomFin System;

- e. Access, use, or monitor our CustomFin System for benchmarking or any direct competitive purposes.
- f. Copy, modify, or create derivative works or improvements of the CustomFin Systems;
- g. Rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any portion of the CustomFin System to any person, including on or in connection with the Internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service;
- h. Reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Systems, in whole or in part;
- i. Bypass or breach any security device or protection used by the Systems or allow access or use of the Systems by anyone other than by you using your own then valid access credentials;
- j. Input, upload, transmit, or otherwise provide to or through the Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to
 - i. permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any
 - 1. computer, software, firmware, hardware, system, or network; or
 - 2. any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data processed thereby; or
 - ii. prevent anyone from accessing or using the CustomFin Systems as intended;
- a. Damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the CustomFin System, in whole or in part;
- b. Remove, delete, alter, or obscure any trademarks, specifications, documentation, terms of use, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any portion of the CustomFin System, including any copy thereof;
- c. Access or use the CustomFin System in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other rights of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any Customer, Client or Financier), or that violates any applicable law;
- d. Access or use the CustomFin System for purposes of competitive analysis of same, the development, provision, or use of a competing software services, systems or products or any other purpose that is to CustomFin's detriment or commercial disadvantage; or
- e. Otherwise access or use the Systems or Provider Materials beyond the scope of the authorization granted under these Terms of Use.

We may terminate or disable your access to the CustomFin System for any reason, with or without cause, including if we believe that you have violated or acted inconsistently with these Terms of Use.

6. User Representations

Parts of the System may be accessed only by registering for an account and creating a password. Keep your password secure. You are responsible for the activities on your account. CustomFin is not responsible for the information, activities, or data associated with your account. You represent, warrant, and agree that no materials of any kind submitted through your account or otherwise posted or shared by you through the System will violate or infringe upon the rights of any third party, including, without limitation, any copyright,

trademark, patent, privacy, publicity, or other personal or intellectual property rights; or contain libelous, defamatory, or otherwise unlawful material. You will notify us promptly if you discover any unauthorized use of your account. We are not responsible for any losses resulting from unauthorized use of your account.

In addition, you agree not to use the CustomFin System to:

- a. Except where authorized by us, register for more than one User account, or register or operate a User account on behalf of or for the benefit of any person who is not eligible to register for or operate a User account in their own name;
- b. Impersonate any person or entity, or falsely state or otherwise misrepresent yourself, your age, or your affiliation with or authority to act on behalf of any person or entity;
- c. Upload, post, transmit, share, store, or otherwise make publicly available through the System any private information of any third party, including, without limitation, addresses, phone numbers, email addresses, Social Security numbers, and credit card numbers, unless expressly authorized to do so by that third party;
- d. Upload, post, transmit, share, or otherwise make available any material that contains software viruses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of the CustomFin System;
- e. Use or attempt to use another's account or information, including personally protected information, without express authorization from that other person, or create a false identity through the CustomFin System; or
- f. Make any false or misleading statements or provide any false or misleading information through the CustomFin.

Your use of the System is an acknowledgement that you have reviewed CustomFin's policies and acknowledge CustomFin is not a lender. You also agree to abide by any and all applicable consumer lending regulations, including but not limited to the Equal Credit and Opportunity Act ("ECOA") and Unfair Deceptive, or Abusive Acts or Practices ("UDAAP") as outlined within the Consumer Protection Act of 2010 ("CPA").

7. Information Posted through the System

As between us and you, all content made available on or through the System, whether uploaded, published, or displayed by us, any Client or Financier, including designs, text, graphics, pictures, video, information, software, music, sound and other files, and their selection and arrangement, except as provided in Section 12 (Third Party Links & App Store), is the property of CustomFin or one or more of the Clients or Financiers (collectively the "CustomFin Content"). To the best of our knowledge, we use only content that we own or have permission to use. No CustomFin Content may be modified, copied, distributed, framed, reproduced, republished, downloaded, displayed, posted, transmitted, or sold in any form or by any means, in whole or in part, without the owner's prior written permission. Unless explicitly stated herein, nothing in these Terms of Use shall be construed as conferring any license to intellectual property rights, whether by estoppel, implication, or otherwise.

You are solely responsible for the information that you post or, in the case of a Customer, a Client posts about you on or through the System and your conduct regarding the CustomFin System. By posting information, or permitting information about you to be posted, to or through the System, you agree to

- a. provide, or cause to be provided, accurate, current, and complete information;
- b. maintain the security of your password and identification, to the extent you are provided a password and identification;

- c. promptly notify us of any changes to information or circumstances that could affect your eligibility to continue using the CustomFin System; and
- d. be fully responsible for all use of your account and for any actions that take place using your account.

8. Consent to Electronic Records and Communication

As part of your relationship with us, you have the right to receive certain information “in writing” – which means you are entitled to receive such information on paper. The federal ESIGN Act and certain state laws allow us to provide this information to you electronically, instead, with your prior consent. To better serve you, we need your consent to use Electronic Records (defined below) in our relationship with you generally. This document informs each Customer of his/her rights when receiving Electronic Records from us in connection with any CustomFin Program loan for which such Customer applies (an “Account”). Each Customer must read and consent to the terms outlined below.

- a. **Definitions.** For purposes of this Consent to Electronic Records and Communication, the following terms have the following meaning: “We,” “us,” and “our” refer to CustomFin, the Customer’s Client and Financier and their current and future affiliates, agents, and assigns and any other person or entity who provides services related to your Account, including the CustomFin Program. “You” and “your” means the each Customer giving this consent, and also each additional applicant, accountholder, authorized user, and account contact on any CustomFin Program loan for which such Customer applies. “Electronic Records” are any legally-required disclosures, agreements, Account information, notices, statements, and other information provided to you electronically. Electronic Records may include, but are not limited to, applicable disclosures pursuant to the Equal Credit Opportunity Act and Regulation B; ESIGN Act Disclosure and Consent; the Truth in Lending Act and Regulation Z; the Gramm-Leach-Bliley Act and Regulation P; and any other federal, state or local law, or regulation applicable to your application or Account.
- b. **Your Consent to Use Electronic Records and Signatures.** By agreeing to this Consent to Electronic Records and Communication, you acknowledge receipt of this document, and consent to the use of Electronic Records and electronic signatures in connection with your Account (collectively, “Your Consent”). Your Consent is effective until you withdraw Your Consent. We may always, in our sole discretion, provide you with a document in writing, even when you have chosen to receive it electronically.
- c. **Requesting Paper Copies.** You may request paper copies of Electronic Records at no cost by [contacting us](#). Before you decide to do business electronically with us, you should consider whether you have the required hardware and software capabilities described below.
- d. **Hardware and Software Requirements.** To access and retain Electronic Records electronically, you will need to use the computer software and hardware identified below. “Current Version” means a version of the software or hardware that is currently being supported by its publisher. You will need the following:
 - i. Internet access,
 - ii. Current Version (defined above) of a PDF reader (such as Adobe® Acrobat),
 - iii. Current Version of an Internet browser (such as Internet Explorer, Firefox, Chrome, Safari),
 - iv. A means to retain documents by printing or storing electronically,
 - v. A valid email address, and
 - vi. A personal computer, mobile device, or other device capable of supporting the requirements listed above.

If these requirements change in a way that creates a material risk that you would not be able to receive or retain your Electronic Records, we will notify you. Continuing to use electronic Account services after receiving notice of the change is reaffirmation of Your Consent.

- e. **Withdrawing Consent.** You have the right to withdraw Your Consent at any time and at no cost to you. If you withdraw Your Consent prior to the approval of your application, this will prevent you from receiving various electronic information from us. If at any time you wish to withdraw Your Consent, [contact us](#). If you withdraw Your Consent, the legal enforceability of any prior Electronic Record will not change.

You provide your consent and agree that we may contact you for any lawful reason, including, but not limited to, in connection with your application and Account, including for the collection of amounts owed to us under any loan granted, and to market goods and services of various Clients and Financiers, their servicers, or any unaffiliated third-parties. We may contact you at such addresses or numbers (including wireless cellular telephone numbers and ported landline numbers) as you may provide to us from time to time. We may use any means of communication, including, but not limited to, postal mail, telephone, electronic mail, text messaging, voice messages, or other technology, to reach you. You agree that we may use automated dialing and announcing devices that may play recorded messages. We may also send text messages to your telephone. You are not required to provide your mobile telephone number as a condition of receiving credit, and you may withdraw your consent to use automated dialing systems and pre-recorded messages in connection with your mobile telephone number at any time by [contacting us](#).

By providing Your Consent, you:

- i. Acknowledge that you have the technical ability to access the Electronic Records in the designated formats described above;
- ii. Acknowledge that you have read the information about Electronic Records and Communication;
- iii. Consent to having legally-required disclosures, agreements, Account information, notices, statements, and other information provided or made available to you in electronic form and doing business with us electronically;
- iv. Acknowledge that you may request a paper copy of an Electronic Record at no charge to you; and
- v. Indicate your intent to utilize electronic signatures to apply for credit and process transactions on your account.

9. Consent to be Contacted

To the extent required by applicable law, we endeavor to make the proper disclosures and obtain consumer consent when collecting your contact information.

10. Third Party Services

CustomFin offers services provided by third parties. You consent to CustomFin providing your contact information to these third-party providers for any and all purposes CustomFin, in its sole discretion, deems appropriate.

11. Intellectual Property

- a. **Trademarks.** CustomFin, its names and all associated graphics, logos, designs, page headers, button icons, scripts, and service names are registered trademarks, trademarks, or trade dress in the United States. CustomFin's trademarks and trade dress may not be used, including as part of trademarks or as part of domain names, in connection with any product or service in any manner that is likely to cause confusion and may not be copied, imitated, or used, in whole or in part, without the prior written permission of CustomFin in each instance.
- b. **Submissions.** You acknowledge and agree that any questions, comments, suggestions, ideas, feedback, or other information ("Submissions") provided by you to us through the CustomFin System are non-confidential and shall become the sole property of CustomFin. CustomFin shall own exclusive rights, including all intellectual property rights, and shall be entitled to the unrestricted use and dissemination of these Submissions for any purpose, commercial or otherwise, without acknowledgment or compensation to you.
- c. **Copyright Complaints.** If you believe that any material on the System infringes upon any copyright that you own or control, you may [contact us](#) about such infringement.
- d. **Notice Requirements.** To meet the notice requirements under the Digital Millennium Copyright Act, the notification must be a written communication and include the following information:
 - i. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
 - ii. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works, a representative list of such works at that site;
 - iii. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material;
 - iv. Information reasonably sufficient to permit us to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted;
 - v. A statement that the complaining party has a good-faith belief that use of the material in the manner complained of is not authorized by the copyright owner; and
 - vi. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

12. Third-Party Links & App Store. Third-Party Links & Ads

The System may contain links to third-party websites and services, and/or display advertisements for third parties (collectively, "Third-Party Links & Ads"). Where the System contains links to Third-Party Links & Ads, these links are provided for your information and convenience only. We have no control over the contents of those sites or resources. CustomFin does not review, approve, endorse, or make any promises with respect to Third-Party Links & Ads. You use all Third-Party Links & Ads at your own risk, and should apply a suitable level of caution and discretion in doing so. When you click on any of the Third-Party Links & Ads, the applicable third party's terms and policies apply, not these Terms of Use.

App Store. When you download our Apps, you may do so through a third party's online application store ("App Store"). You acknowledge that these Terms of Use are between you and us and not with the owner or operator of the App Store ("App Store Owner"). As between the App Store Owner and us, we, and not the App Store Owner, are solely responsible for the CustomFin System, including the Mobile Application,

the content, maintenance, support services, and warranty, and addressing any claims relating thereto (e.g., product liability, legal compliance, or intellectual property infringement). In order to use the Mobile 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 Owner in connection with the System, including the Mobile Application.

Your use of the App Store Sourced Application must comply with the App Store's "Terms of Service" or equivalent terms. You acknowledge that the App Store Owner has no obligation whatsoever to furnish any maintenance and support services with respect to the App Store Sourced Application. In the event of any failure of the App Store Sourced Application to conform to any applicable warranty, you may notify the App Store Owner, and the App Store Owner will refund the purchase price for the App Store Sourced Application to you (if any) and to the maximum extent permitted by applicable law, the App Store Owner will have no other warranty obligation whatsoever with respect to the App Store Sourced Application. As between CustomFin and the App Store Owner, any other claims, losses, liabilities, damages, costs, or expenses attributable to any failure of the Mobile Application to conform to any warranty (if any) will be the sole responsibility of CustomFin.

You and we acknowledge that, as between CustomFin and the App Store Owner, the App Store Owner 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: (1) product liability claims; (2) any claim that the App Store Sourced Application fails to conform to any applicable legal or regulatory requirement; and (3) claims arising under consumer protection or similar legislation.

You and we 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 CustomFin and the App Store Owner, CustomFin, not the App Store Owner, will be solely responsible for the investigation, defense, settlement, and discharge of any such intellectual property infringement claim to the extent required by these Terms of Use.

You and we acknowledge and agree that the App Store Owner, and the App Store Owner's affiliates, are third-party beneficiaries of these Terms of Use as related to your license of the App Store Sourced Application, and that, upon your acceptance of these Terms of Use, the App Store Owner will have the right (and will be deemed to have accepted the right) to enforce the terms of these Terms of Use as related to your license of the App Store Sourced Application against you as a third-party beneficiary thereof.

You represent and warrant that

- a. you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country;
- b. you are not listed on any U.S. Government list of prohibited or restricted parties; and
- c. you are not a resident of the European Union, nor do you otherwise qualify for protection under the General Data Protection Regulation, commonly referred to as GDPR.

Without limiting any other terms in these Terms of Use, you must comply with all applicable third-party terms of agreement when using the App Store Sourced Application.

13. Disclaimers

We reserve the right to change any and all content within the System and any service offered through the CustomFin Program at any time without notice. We provide the CustomFin System "AS IS" and assume no responsibility for any failure to provide the CustomFin System to you. The System may be temporarily unavailable from time to time for maintenance or other reasons. We may discontinue the System or any goods or services available through the System at any time and for any reason. We are not responsible for any problems or technical malfunction of any telephone or cable network or lines, servers or providers,

computer equipment, software, failure of email, or technical problems or traffic congestion on the Internet or on or through the System, including injury or damage to Users or to any other person's devices related to or resulting from use of the CustomFin System. Under no circumstances will we be responsible for any loss or damage, including any loss or damage to any user data, financial damages, lost profits, loss of business, or personal injury or death, resulting from anyone's use of the CustomFin System.

You agree that your use of the CustomFin System is at your own risk, and that we expressly disclaim all warranties, terms and conditions, including, but not limited to, the implied warranties, terms and conditions of merchantability, fitness for a particular purpose, noninfringement of third party rights and satisfactory quality.

14. Limitation of Certain Damage Types

Except in jurisdictions where such provisions are restricted or prohibited, in no event will CustomFin, any client, any financier, or any of their directors, employees, or agents be liable to you or any third-party for any indirect, consequential, exemplary, incidental, special, or punitive damages, including for any lost profits or lost data arising from your use of the CustomFin system or any of the content or other materials on or accessed through the CustomFin system, even if any of us is aware of or has been advised of the possibility of such damages.

15. Limitation of Liability Amount

To the extent not prohibited by applicable law, our liability to you for any cause whatsoever, and regardless of the form of the action, will at all times be limited to the greater of the amount paid by you to us for the CustomFin program service at issue in the three months prior to the event giving rise to the claim and \$100. You acknowledge that if no fees are paid to us for a CustomFin product service, you shall be limited to money damages or \$100, at most, or injunctive relief, unless otherwise prohibited by applicable law, and shall not be entitled to any other damages, regardless of the cause of action. Nothing in these terms shall limit or exclude our liability for:

- a. death or personal injury resulting from our willful misconduct;
- b. fraud or fraudulent misrepresentations; or
- c. any other liability that cannot be excluded by applicable law.

16. Disputes, Governing Law, Venue, and Jurisdiction

To the extent the parties are permitted under these Terms of Use to initiate litigation in a court, both you and CustomFin agree that these Terms of Use shall be governed by Florida law. Jurisdiction and venue for any proceeding arising out of or relating to these Terms of Use or your use of the CustomFin System shall be in Palm Beach County, Florida. All actions arising from or relating to these Terms of Use or the CustomFin System must be brought exclusively in either

- a. the permissible arbitration organizations listed in **Section 17**, or, where exempted from arbitration by these Terms of Use,
- b. the courts of the State of Florida located in Palm Beach County.

Each party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind that in any way arises from or relates to these Terms of Use, in any forum other than those designated in this section. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the State of Florida located in Palm Beach County. Each party agrees that a final judgment in any such arbitration, action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Our failure to exercise or enforce any right or provision of these Terms of Use shall not constitute a waiver of that right or provision. If any provision of these Terms of Use is found by a court of competent jurisdiction to be invalid, then we nevertheless agree that the court should endeavor to give effect to the intentions reflected in the provision, and the other provisions of these Terms of Use shall remain in full force and effect. The language of these Terms of Use shall be construed as to its fair meaning and not strictly for or against any party.

17. Arbitration Agreement & Dispute Resolution

Please read this Arbitration Agreement carefully. It is part of each Customer's contract with CustomFin and affects each Customer's rights. It contains procedures for mandatory binding arbitration and a class action waiver.

- a. **Scope of Arbitration Agreement ("Arbitration Agreement").** Each Customer acknowledges and agrees that any dispute or claim relating in any way to his/her access or use of the CustomFin System or to any other aspects of his/her relationship with CustomFin will be resolved by binding arbitration, rather than in court, except that (1) each Customer may assert claims in small claims court if such claims qualify, so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis; and (2) CustomFin may seek equitable relief in court for infringement or other misuse of intellectual property rights (such as trademarks, trade dress, domain names, trade secrets, copyrights, and patents).

This Arbitration Agreement shall apply, without limitation, to all claims that arose before this or any prior Agreement. Now or in the future, there may be lawsuits against CustomFin alleging class, collective, and/or representative claims. Such claims, if successful, could result in some monetary recovery to Customer. The existence of such class, collective, and/or representative lawsuits does not mean that such lawsuits will ultimately succeed. But if Customer agrees to arbitration with CustomFin, Customer is agreeing in advance that Customer will not participate in or seek to recover monetary or other relief under such class, collective, and/or representative lawsuits. Instead, by agreeing to arbitration, Customer may bring your claims against CustomFin in an individual arbitration proceeding. If successful on such claims, Customer could be awarded money or other relief by an arbitrator.

- b. **Arbitration Rules and Forum.** This Arbitration Agreement is governed by the Federal Arbitration Act in all respects. To begin an arbitration proceeding, Customer must [contact us](#) requesting arbitration and describing Customer's claim. The arbitration will be conducted by Judicial Arbitration and Mediation Services, Inc. ("JAMS") under its rules, including JAMS' Consumer Arbitration Minimum Standards. The JAMS' rules are available at www.jamsadr.com or by calling JAMS at 1-800-352-5267. Payment of all filing, administration, and arbitration fees will be governed by JAMS' rules. We will reimburse those fees for claims totaling less than \$10,000 unless the arbitrator determines the claims are frivolous. Likewise, CustomFin will not seek attorneys' fees and costs in arbitration unless the arbitrator determines the claims are frivolous. If JAMS is not available to arbitrate, the parties will select an alternative arbitral forum.
- c. **Arbitrator Powers.** The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability, or formation of this Arbitration Agreement including, but not limited to, any claim that all or any part of this Arbitration Agreement is void or voidable. The arbitration will decide the rights and liabilities, if any, of Customer and CustomFin. The dispute will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator will have the authority to grant motions dispositive of all or part of any claim or dispute. The arbitrator will 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 these Terms of Use. The arbitrator will 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 on Customer and CustomFin.

- d. **Waiver of Jury Trial.** You and CustomFin each knowingly and voluntarily waive any constitutional and statutory rights to sue in court and receive a judge or jury trial. Customer and CustomFin are instead electing to have claims and disputes resolved by arbitration. An arbitrator can award on an individual basis the same damages and relief as a court and must follow these Terms of Use as a court would. However, there is no judge or jury in arbitration, and court review of an arbitration award is limited. In any litigation between Customer and CustomFin over whether to vacate or enforce an arbitration award, Customer and CustomFin waive all rights to a jury trial, and elect instead to have a judge resolve the dispute.
- e. **Waiver of Class or Consolidated Actions.** All claims and disputes within the scope of this arbitration agreement must be arbitrated on an individual basis and not on a class basis. Claims of more than one customer cannot be arbitrated or litigated jointly or consolidated with those of any other customer. If, however, this waiver of class or consolidated actions is deemed invalid or unenforceable, neither Customer nor CustomFin is entitled to arbitration. Instead, all claims and disputes will then be resolved in a court as set forth in Section 16 (Disputes, Governing Law, Venue, and Jurisdiction) above.
- f. **Opt Out.** Customer may opt out of this Arbitration Agreement. If Customer does so, neither Customer nor CustomFin can force the other to arbitrate. To opt out, Customer must notify CustomFin via email no later than 30 days after first becoming subject to this Arbitration Agreement by agreeing to be bound by these Terms of Use or an earlier version thereof. Customer's notice must include Customer's name and address, Customer's CustomFin username (if any), the email address Customer used to set up Customer's (if Customer has one), and an unequivocal statement that Customer wants to opt out of this Arbitration Agreement. Customer must send Customer's opt-out notice by [contacting us](#). If Customer opts out of this Arbitration Agreement, all other parts of these Terms of Use will continue to apply to Customer. Opting out of this Arbitration Agreement has no effect on any previous, other, or future arbitration agreements that Customer may have with us.

This Section 17 does not apply to Clients, Client Representatives, the Financiers or the Financier Representatives.

18. Indemnity

To the maximum extent permitted by law, you agree to indemnify and hold us, our direct and indirect parent entities and subsidiaries, each of our and their respective affiliates, and each of the foregoing's respective directors, officers, agents, contractors, partners, and employees, harmless from and against any loss, liability, claim, demand, damages, costs (including attorneys' fees), and expenses we incur, arising out of or in any way connected with your use of the CustomFin System, any violation by you of these Terms of Use or any of your other actions.

19. Survival

The following Sections survive the termination of these Terms of Use, including any other provisions hereof that survive in accordance with their terms: 8, 9, and 11 through 21.

20. Remedies Cumulative

Each and all of the rights and remedies given to CustomFin by these Terms of Use or by law or equity are cumulative, and the exercise of any such right or remedy by CustomFin shall not impair CustomFin's right

to exercise any other right or remedy available to such party under these Terms of Use or under law or equity.

21. Provisions Relating to Client Representatives and Financier Representatives

As used in this Section, a “**Business Source**” means any Client Representative, any Financier Representative or any CustomFin Representative, as applicable.

- a. Confidentiality.** Except for disclosures that are required to be made under law or in connection with any dispute between any Business Source and CustomFin and to its Client, Financier or CustomFin, as applicable, who have a need to know same to provide service to a Customer, no Business Source (as such, “Recipient”) will disclose or use, and will direct its representatives not to disclose or use, any Confidential Information (as defined below) of CustomFin (“Disclosing Party”) for any reason other than in referring or providing services under the CustomFin System for Customers and Recipient agrees to protect Disclosing Party’s Confidential Information by using the same degree of care it uses to protect its own confidential information. As used herein, “Confidential Information” means Disclosing Party’s information
- i. that is not generally known or ascertainable (that is, secret),
 - ii. from which Disclosing Party derives economic value or business advantage by keeping the information secret, and
 - iii. for which Disclosing Party takes reasonable efforts to preserve its secrecy including, without limitation, the terms of these Terms of Use, any list of Clients and/or Financers, which are all Disclosing Party’s Confidential Information. Upon Disclosing Party’s written request, Recipient will promptly return to Disclosing Party or destroy Disclosing Party’s Confidential Information in its possession and certify in writing to Disclosing Party that it has done so.

This provision does not amend or limit any other confidentiality or non-disclosure agreement and Recipient may already be a party to with CustomFin.

- b. Non-Solicitation; Non-Circumvention.** No Client Representative shall, directly or indirectly, solicit, service, contact or attempt to contact, during such Client Representative’s employment or engagement with his/her Client, and for the 12-month period following the termination or his/her employment with the Client (whether terminated for cause, without cause, or by either Party) (the “Restriction Period”), any Financier with which such Client Representative did not have a relationship prior to its interactions with such Financier as part of any CustomFin Program, for purposes of assisting a consumer in obtaining financing through such Financier outside the CustomFin Program. Each Client Representative shall provide CustomFin with prompt notice if any Financier attempts to circumvent CustomFin in any manner during the Restriction Period.

Additionally, during the Restriction Period, each Business Source shall not, directly, indirectly or in any other manner, seek to bypass, compete with, avoid, or circumvent CustomFin, its business, the CustomFin System or CustomFin’s rights under these Terms of Use by causing any Customer to obtain financing directly from a Financier with which such Business Source did not have a relationship prior to its interactions with such Financier as part of participating in any CustomFin Program.

- c. Independent Contractor.** The relationship between or amongst CustomFin and each Business Source (other than any CustomFin Representative) is solely as set forth in these Terms of Use. No Business Source (other than a CustomFin Representative) shall be deemed the employee, agent, partner or joint venturer of CustomFin. No Business Source shall have, or represent to have, any authority or capacity to make or alter any agreement on behalf of CustomFin, to legally bind

CustomFin, to credit or receive money due on behalf of CustomFin or to do any other thing on behalf of CustomFin. CustomFin will not have or attempt to exercise any control or direction over the methods used by any Business Source (other than its employees) to perform its work, duties and obligations except as set specifically set forth herein. CustomFin is not responsible for any tax collection, payment and/or reporting obligations with respect to any Business Source (other than its employees).

- d. **Compliance.** Each Business Source, at its sole expense, shall comply with all applicable laws, rules and regulations, pay all taxes applicable to it, and obtain all required licenses, permits and approvals to provide its services to the Customers, whether as part of the CustomFin Program or any agreement with the Customer.

Please print a copy of these terms of use for your records and please check back frequently for any changes to these terms of use.

CUSTOM FINANCING
SOLUTIONS