



**FINPOINT LIMITED**

**TERMS OF USE**

for the  
Finpoint Platform

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**THESE TERMS OF USE** govern the relationship between FINPOINT LIMITED as the operator of the electronic Platform, which is operated from the URL [www.finpoint.co.uk](http://www.finpoint.co.uk), and the Platform Users.

By registering on the Platform you shall obtain the status of a Platform User and have agreed to these Terms of Use. If you do not agree with any part of these Terms of Use, please do not register on the Platform.

In these Terms of Use, references to "**Finpoint**" and "**us**" and "**we**" and "**our**" means Finpoint Limited, Linen Hall, 162-168 Regent Street , W1B 5TD, company registration number 8846630 – whose registered address Davidson House, Forbury Square, Reading Berkshire, RG1 3EU.

References to "**you**" means a Platform User.

Finpoint reserves the right to refuse registration of a Platform User at its discretion without having to state a reason.

Finpoint reserves the right to change the contents of the Platform, including these Terms of Use, at any time by posting such changes on the Platform. We will communicate any changes in the Terms of Use to you as soon as reasonably practicable.

For information about how to use the Platform, please refer to the User Manual. If you have any questions or concerns please email us at: [info@finpoint.co.uk](mailto:info@finpoint.co.uk).

## **1. DEFINITIONS AND INTERPRETATIONS**

### **1.1 In these Terms of Use:**

**"Advisor"** means a person that has been granted access to the Platform by an Obligor to provide it with support services;

**"Blog"** means the URL [www.finpoint.co.uk](http://www.finpoint.co.uk) which is a repository for material to be posted by Platform Users or third parties;

**"Affiliated Company"** means in relation to any person, a Subsidiary of that person or a Holding Company of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;

**"Obligor"** means a person that registers on the Platform with a view to obtaining financing;

**"Confidential Information"** means all financial, technical, legal, fiscal, operational information, information relating to business activities, staff or the management, or other information relating to the respective Obligor who is disclosing the information or an Affiliated Company and its Financing Profile which is shared with the Financier, its corporate agents, staff, consultants or other third parties working for it directly or indirectly on the Platform or in arranging a Financing Transaction;

**"Confidentiality Agreement"** means the confidentiality agreement that is to be concluded between a Financier and Finpoint before disclosing Confidential Information according to clause 7;

**"Data"** means all information that a Platform User posts on the Platform or that a Platform User accesses by using the Platform, other than on the Finance Pinboard or the Blog;

**"Listing Board"** means the webpage on the Website which is a repository for material to be posted by Platform Users or third parties;

**"Financing Profile"** means the description of an Obligor and its financing requirements posted on the Opportunities Board by the respective Obligor;

**"Financing Transaction"** means any financing agreement arranged between an Obligor and Financier that is achieved at least in part by use of the Platform;

**"Financing Volume"** means in respect of a Financing Transaction:

- (i) for Financing: the principal amount of Financing committed whether or not drawn down;
- (ii) for receivables financings: the maximum amount of receivables which the Financier has agreed to finance at any one time;
- (iii) for leases: the value of the assets subject to the lease; and
- (iv) for a commodity backed Murabaha transaction: the total facility limit.

**"Holding Company"** means, in relation to a person, any other person of which it is a Subsidiary;

**"Intellectual Property Rights"** means:

- (a) patents, utility models, supplementary protection certificates, rights in trade secrets and other confidential or undisclosed information (such as inventions (whether patentable or not) or know-how) registered designs, rights in copyright, database rights, design rights, trademarks and service marks;
- (b) all rights in the nature of any of the items referred to in paragraph (a) including continuations, continuations in part and divisional applications, reputation, personality or image, trade names, business names, brand names, get-up, logos, domain names and URLs, rights in unfair competition and, without prejudice to anything set out elsewhere in this definition, rights to sue for passing off and all rights having equivalent or similar effect to, and the right to apply for any of, the rights referred to in this definition in any jurisdiction.

**"Introduction Fee"** has the meaning given to it in clause 10.1;

**"Financier"** - **"Lender"** means a person registered on the Platform with a view to providing financing;

**"Listing Board"** means the area on the Platform where Obligors' Financing Profiles are shown;

**"Personal Data"** means personal data within the meaning of section 1 of the Data Protection Act 1998;

**"Platform"** means the electronic platform which is operated from the URL [www.finpoint.co.uk](http://www.finpoint.co.uk);

**"Platform User"** means every Obligor and Financier registered on the Platform;

**"Services"** means the services available to Platform Users through the use of the Platform;

**"Subsidiary"** has the meaning given to it by section 1159 of the Companies Act 2006;

**"Transaction Fee"** means the fee payable to Finpoint according to clause 10.1 in respect of any Financing Transaction; and

**"Website"** means the URL [www.finpoint.co.uk](http://www.finpoint.co.uk) and the following web pages via which the Platform is accessible.

1.2 In these Terms of Use (unless the context requires otherwise):

1.2.1 the words "including", "include", "for example", "in particular" and words of similar effect shall not be deemed to limit the general effect of the words which precede them;

1.2.2 reference to any agreement, contract, document or deed shall be construed as a reference to it as varied, supplemented or novated from time to time;

1.2.3 reference to a party shall be construed to include its successors and permitted assigns or transferees;

1.2.4 words importing persons shall include natural persons, bodies corporate, unincorporated associations and partnerships (whether or not any of them have separate legal personality);

1.2.5 words importing the singular shall include the plural and vice versa;

1.2.6 words importing any one gender shall include other genders;

1.2.7 the headings, index and front sheet are all for reference only and shall be ignored when construing these Terms of Use;

1.2.8 references to a clause, schedule or paragraph are references to the clause, schedule or paragraph of these Terms of Use; and

1.2.9 reference to any legislative provision shall be deemed to include any statutory instrument, byelaw, regulation, rule, subordinate or delegated legislation or order and rules and regulations which are made under it and any subsequent re-enactment or amendment of the same (if and to the extent provided for in these Terms of Use).

## **2. REPRESENTATIONS**

2.1 The Platform User represents and warrants to Finpoint that:

2.1.1 it has full power and authority to agree to, deliver and perform its obligations under these Terms of Use;

2.1.2 these Terms of Use have been agreed to by a duly authorised representative of the Platform User;

2.1.3 there are no currently in force or binding agreements with third parties the terms of which would prevent it from entering into these Terms of Use or would materially impede the performance by it of its obligations under these Terms of Use; and

- 2.1.4 it is not and nor are any of its directors a party to any litigation proceedings or disputes which will have a material adverse effect upon its ability to perform its obligations under these Terms of Use.

### **3. SCOPE OF SERVICES**

- 3.1 Finpoint will provide the Services to the Platform Users in accordance with these Terms of Use.
- 3.2 Finpoint will provide the Services to the Obligor until the first anniversary of the Obligor's first posting of its Financing Profile on the Opportunities Board or until the end of the Obligor's registration period.
- 3.3 Finpoint will provide an up-to-date credit rating report, where possible of the Obligor from a credit rating provider.
- 3.4 General information on corporate financing on the Platform will be available to all Platform Users free of charge.
- 3.5 The Platform will enable Financiers to filter, according to various criteria, the Financing Profiles posted by Obligors on the Listing Board which will not disclose the name of the Obligor.
- 3.6 The Platform will only serve to arrange Financing Transactions between Platform Users. The Platform is not a trading platform. Except for entering into Confidentiality Agreements, no contracts or agreements will be arranged on the Platform.
- 3.7 The Services provided by Finpoint under these Terms of Use are only available to non-natural persons including but not limited to corporate bodies incorporated in the UK or partnerships formed under English law.
- 3.8 An Obligor agrees to expressly waive any rights or claims against Finpoint where the posting of anonymous information on the Listing Board results in identification of the Obligor

### **4. USE OF THE WEBSITE**

- 4.1 You will use the Website in compliance with these Terms of Use.
- 4.2 The Website will be available to Platform Users subject to technical availability. We will not be liable if for any reason the Website is unavailable at any time or for any period.
- 4.3 The Website is provided on an "as is" basis. We do not warrant that the Website will be uninterrupted or error free, nor do we warrant that the Website will be free of viruses or other harmful components.
- 4.4 Access to the Website may be suspended temporarily and without notice in the case of system failure, maintenance or repair or for reasons beyond our control.
- 4.5 As far as is reasonably practicable, we will inform you about restrictions and interruptions to the Website by email. We will restore the availability of the Website as soon as is reasonably practicable.

- 4.6 Whilst we make every effort to ensure the Website is available and secure, given the nature of the Internet, we do not warrant or guarantee this will always be the case. You agree to use the Website at your own risk.
- 4.7 You agree to keep your user name and password confidential to yourself and your Advisors at all times to ensure that no unauthorised parties gain access to the Platform via your user account.
- 4.8 You will notify us immediately if you identify a breach of your user account.
- 4.9 We are the owner or the licensee of all Intellectual Property Rights on the Website. Those works are protected by copyright laws and treaties around the world. All such rights are reserved.
- 4.10 You are permitted to print and download material from the Website for the purpose of using the Platform in accordance with these Terms of Use. You may not copy, reproduce, transmit, store, process or change any representation or contents on the Website without the prior written consent of Finpoint.
- 4.11 Links to third party websites on the Website are provided solely for your convenience. If you use these links, you leave the Website. We have no control over the contents of those sites or resources, and accept no responsibility for them or for any loss or damage that may arise from your use of them.

## **5. UPLOADING MATERIAL TO THE WEBSITE**

- 5.1 Whenever you upload material to the Website or Listing Board, you warrant that such material does not breach any Intellectual Property Rights held by any third party. Any material you upload will be considered non-confidential and non-proprietary.
- 5.2 We will not be responsible, or liable to any third party, for the content or accuracy of any materials posted by you or any other Platform User.
- 5.3 We have the right to edit and/or remove any material or posting you make on the Website or Listing Board if, in our opinion, such material does not comply with what we consider an appropriate use of the Services.
- 5.4 We also have the right to disclose your identity to any third party who is claiming that any material posted or uploaded by you to the Website or Listing Board constitutes a breach of their Intellectual Property Rights, or any statutory right to privacy.
- 5.5 Finpoint accepts no liability and responsibility for any amount or kind of loss or damage that may result to you or a third party (including without limitation, any direct, indirect, punitive or consequential loss or damages, or any loss of income, profits, goodwill, data, contracts, use of money, or loss or damages arising from or connected in any way to business interruption, and whether in tort (including without limitation negligence), contract or otherwise) in connection with viruses that may infect your computer equipment, software, data or other property on account of your access to, use of, or browsing of the Website or Listing Board.

## **6. DATA**

- 6.1 You agree to use all reasonable endeavours to ensure that all Data shared by you on the Platform will be accurate, clear and not misleading.

- 6.2 If any of your Data is based on third party information, you agree to use all reasonable endeavours to verify the accuracy of this Data.
- 6.3 Platform Users will have sole responsibility for sharing or requesting such Data which they consider necessary in evaluating a Financing Profile.
- 6.4 We will not be obliged to verify the accuracy of Data and will accept no liability whatsoever under contract, tort or otherwise for any indirect, incidental, special, punitive or consequential loss, damage or expenses (including without limitation any loss of revenue, profits, contracts, anticipated savings, wasted expenditure, data or goodwill) as a result of the disclosure and sharing of inaccurate Data.

## **7. CONFIDENTIALITY**

- 7.1 Confidential Information will only be communicated between the Platform Users in accordance with these Terms of Use and pursuant to a Confidentiality Agreement that has been entered into between the relevant Platform Users and forms part of these Terms of Use.
- 7.2 The respective Platform User which receives the Confidential Information shall be obliged to treat it confidentially and not to disclose it to third parties apart from within the scope permitted by the Confidentiality Agreement and to ensure that all Confidential Information is treated with the same care as would be accorded to its own Confidential Information. In addition, the Platform Users shall only use Confidential Information for the purposes of using the Services and to assess and negotiate a Financing Transaction.
- 7.3 In the event of a breach of any provision of the Confidentiality Agreement by a Financier, the Obligor whose Confidential Information has been subject to the breach will have a right and claim directly against the respective Financier.
- 7.4 An Obligor will have no right to require Finpoint to take legal action against any Financier in respect of any breach or alleged breach of any of the Financier's obligations under these Terms of Use.
- 7.5 The Obligor undertakes that any provision or disclosure of Confidential Information to Finpoint complies with all data protection legislation, including but not limited to the Data Protection Act 1998.
- 7.6 The Obligor undertakes that it has any and all relevant authorities and permissions to provide or disclose Confidential Information to Finpoint.
- 7.7 Confidential Information will be returned to the Obligor subject to the terms of the Confidentiality Agreement.
- 7.8 Finpoint will use the Confidential Information only to the extent necessary for providing the Services and not use or exploit the Confidential Information in any way except for the purpose of providing the Services.
- 7.9 Finpoint will not disclose any Confidential Information in whole or in part to any group of companies that Finpoint belongs.
- 7.10 The Obligor confirms that Finpoint is authorised to enter into a Confidentiality Agreement with the Financier whenever the Obligor invites the Financier to enter into a Confidentiality Agreement. The Obligor has a right to enforce any term of the Confidentiality Agreement under the Contracts (Rights of Third Parties) Act 1999.



## **8. DATA PROTECTION**

- 8.1 Finpoint will ensure that it processes and protects Personal Data shared by a Platform User and received by Finpoint from Platform Users in using the Platform, according to any applicable data protection legislation, including but not limited to the Data Protection Act 1998.
- 8.2 Any disclosure of Personal Data of third parties by Platform Users via the Platform will be subject to the obligations in accordance with all data protection legislation, including but not limited to the Data Protection Act 1998.
- 8.3 Finpoint does not accept any liability for any breach of data protection legislation, including but not limited to the Data Protection Act 1998, by Platform Users.

## **9. FINANCING PROFILE**

A Financier will only have the right to access the full contents of the Financing Profile after obtaining the respective Obligor's consent and after agreeing to the terms of the Confidentiality Agreement as set out in clause 7 (*Confidentiality*).

## **10. FEES**

- 10.1 The fee to be levied by Finpoint on the financier following completion of a financing transaction (the "transaction fee") will be based on the term of the financing transaction and levied at the following rates:
- 10.1.1 for a term of up to one year - 1% of the Financing Volume;
  - 10.1.2 for a term of over three years and up to five years – 1.5% of the Financing Volume;
  - 10.1.3 for a term of over five years – 2% of the Financing Volume;
- 10.2 Where a Transaction Fee does not apply, Finpoint may receive a commission that is payable to Finpoint by the Financier in respect of the referral of a Financing.
- 10.3 A Financier is required to notify Finpoint of any Financing Transaction as soon as is reasonably practicable but no later than 14 days after the execution of the agreement relating to the Financing Transaction. A failure to notify Finpoint in such circumstances will be deemed a material breach of these Terms of Use.
- 10.4 Finpoint will be entitled to invoice the Financier for the Transaction Fee or any commission receivable from the Financier following the completion of the Financing Transaction (plus VAT at the applicable rate) immediately upon being advised or otherwise becoming aware of the completion of the Financing Transaction which will be payable within 14 days of the invoice being sent. If payment has not been received within 14 days of the invoice being sent, interest shall accrue on the unpaid amount from the due to the actual date of payment (after as well as before judgment); interest shall be calculated on the basis of a year of 365 days and for the actual number of days elapsed, shall accrue from day-to-day, and shall be compounded quarterly. For the purposes of Clause 10.4, the interest rate shall be two per cent (2%) above the base rate of Metro Bank from time to time.

## **11. LIMITATION OF LIABILITY**

Save as precluded by law, Finpoint will not under any circumstances be liable to you or any person for any loss or damage, whether directly or indirectly arising, or for any indirect, consequential or special loss or damage arising out of, or in connection with, the Services or otherwise, regardless of the type of claim, whether in contract, tort (including negligence), misrepresentation, strict liability, under an indemnity or other legal or equitable theory, whether or not foreseeable, and regardless of the cause of such losses. Nothing in this clause 11 will exclude or limit our liability to you that is caused by negligence, fraud or wilful default.

## **12. INDEMNITY**

Every Platform User will indemnify Finpoint against all claims, demands, actions, proceedings and all losses in relation to any breach or alleged breach of any of the Platform User's obligations under these Terms of Use.

## **13. TERM AND TERMINATION**

- 13.1 Following registration as a Platform User by a Financier or Advisor, the Services will continue in force until terminated by the respective Platform User or Finpoint.
- 13.2 On termination of the Services, the right of the respective Platform User to access the Platform will be withdrawn and the respective Platform User account will be deleted. Finpoint will have the right to delete the stored Data of the respective Platform User.
- 13.3 Finpoint may terminate the Services if a Platform User commits a material breach of these Terms of Use, including but not limited to a breach of clause 7 (*Confidentiality*).
- 13.4 Finpoint may terminate the Services with immediate effect by email to a Platform User if any of the following events occur in respect of a Platform User:
- 13.4.1 if a Platform User makes a proposal for or enters into any compromise or arrangement with its creditors (including any voluntary arrangement as contemplated in the Council Regulation (EC) No 1346/2000 on insolvency proceedings); or
  - 13.4.2 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Platform User; or
  - 13.4.3 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over a Platform User; or
  - 13.4.4 the holder of a qualifying floating charge over the assets of a Platform User has become entitled to appoint or has appointed an administrative receiver; or
  - 13.4.5 a person becomes entitled to appoint a receiver over the assets of a Platform User or a receiver is appointed over the assets of a Platform User; or
  - 13.4.6 a creditor or encumbrancer of a Platform User attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days; or

- 13.4.7 a Platform User suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

## **14. NOTICES**

- 14.1 Notices given under these Terms of Use will be in writing and can be validly served by email.
- 14.2 We will send all notices, information and other correspondence to you at the email address set out in your user account. In the event any notice, information or other correspondence is sent to you via letter, such letter will be sent to the postal address set out in your user account, or such postal address as you may later designate, and will be deemed to be delivered on the second business day after posting.
- 14.3 Notices sent to us should be sent to [info@finpoint.co.uk](mailto:info@finpoint.co.uk).

## **15. SEVERANCE**

- 15.1 If any provision of these Terms of Use is or becomes illegal, invalid or unenforceable, in any respect:
  - 15.1.1 it shall not affect or impair the legality, validity or enforceability of any other provision of these Terms of Use; and
  - 15.1.2 the illegal, invalid, or unenforceable provision will be replaced by Finpoint with a valid and enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the illegal, invalid or unenforceable provision but differing from the replaced provision as little as possible.

## **16. THIRD PARTIES**

A person who is not a party to these Terms of Use cannot enforce or enjoy the benefit of any of the Terms of Use under the Contracts (Rights of Third Parties) Act 1999.

## **17. GOVERNING LAW AND JURISDICTION**

- 17.1 These Terms of Use and all contractual and non-contractual obligations arising out of or in connection with them will be governed by, and construed in accordance with the law of England and Wales.
- 17.2 The exclusive jurisdiction of the courts of England and Wales cover any dispute or claim arising out of or in connection with these Terms of Use.

**Last updated: 31<sup>st</sup> March 2015**