

# Terms of Use

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Castaway Forecasting is a comprehensive and intelligent business modelling and cashflow forecasting tool (**Solution**) made available by Financier Software Pty Ltd ABN 20 140 224 102 of Suite 404/45 Lime St, Sydney NSW 2000, Australia (**we, us, our**) to users under a subscription agreement between a customer (**Account Owner**) and us (**Contract**) during the term of the Contract only. The Solution may consist of cloud-based services (**Cloud Services**) and/or downloadable software applications (**Software**), as specified in the Contract.

By installing, accessing and/or using the Solution, you confirm that you accept and agree to comply with these terms. If you do not agree to these Terms of Use, you must not install, access, or use the Solution.

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## 1. Eligibility to use the Service

- 1.1 These Terms of Use apply to your installation, access and use of the Solution and are in addition to the terms of the Contract.
- 1.2 If there is any inconsistency between these Terms of Use and the Contract, the Contract will apply.
- 1.3 If you are an Account Owner, you must only access and use the Solution and any associated documentation or material we make available to you in accordance with the Contract.
- 1.4 If you are an employee or individual contractor of, or have been invited to access the Service by, an Account Owner:
  - (a) we or the Account Owner may notify you of additional terms that apply to your use of the Solution; and
  - (b) you must only access and use the Solution and any associated documentation or material we make available to you for the Account Owner's internal business purpose and as part of services provided by the Account Owner to its clients.

## 2. User accounts

- 2.1 Where required, the Account Owner is responsible for managing and issuing invites, user accounts and login details for accessing the Solution.
- 2.2 You are responsible for:
  - (a) the safe keeping of your username and password; and
  - (b) all use of the Service under your account and login.
- 2.3 You must treat your username, password and other login details confidential and not share this information with any other person.

## 3. Unauthorised access

- 3.1 You must use reasonable efforts to prevent unauthorised access to or use of your user account.
- 3.2 You must promptly notify us via email to [cybersecurity@castawayforecasting.com](mailto:cybersecurity@castawayforecasting.com) if you have any reason to believe that there has been any unauthorised use of your login details, password or user account, or any other known or suspected breach of security.

## 4. Restrictions on use

- 4.1 You must not:
  - (a) use the Solution to contravene any applicable law or the Contract, or to infringe any right, including intellectual property rights, of any other person;
  - (b) do anything that may circumvent measures employed to prevent or limit access to any part of the Solution;
  - (c) decompile, disassemble, reverse engineer or otherwise attempt to derive any source code or underlying ideas, content or algorithms of any part of the Solution, or try to copy, modify or otherwise create derivative works or imitate the Service or its underlying content;
  - (d) use the Solution in a manner that circumvents the ordinary use or operation of the Solution or disrupts our ability to provide services or support to our customers;
  - (e) use the Cloud Service in a manner that could damage, disable, overburden, or impair the Cloud Service or negatively affect or interfere with any other user's use and enjoyment of the Cloud Service;
  - (f) develop or use any applications that integrate or interact with the Solution without our prior written consent, unless expressly provided in the Contract;
  - (g) use any device, software or routine to interfere or attempt to interfere with the proper working of the Cloud Service including (without limitation) by uploading or transmitting through the website any viruses, worms, trojans or other potentially destructive programs designed to interfere with, interrupt or disrupt the normal operating procedures of the Cloud Service or any of its users; or

- (h) use the Solution for any illegal or unauthorised purpose or engage in or encourage others to engage in any activity that violates any applicable law, these terms or the Contact, or infringes the rights of any other person.

## **5. Privacy policy**

- 5.1 We manage personal information that we collect, store or use in order to provide the Solution in accordance with our privacy policy, which is available at [www.castawayforecasting.com/privacy/](http://www.castawayforecasting.com/privacy/).
- 5.2 Our privacy policy sets out:
  - (a) how we collect, use, disclose and access your personal information; and
  - (b) how you may contact us, make a complaint, access your personal information or correct the personal information we hold about you.

## **6. Intellectual Property**

- 6.1 As between you and us, we own all rights, title and interest in and to:
  - (a) the Solution;
  - (b) all documentation or other materials, content and services relating to the Solution; and
  - (c) all data and information related to access and/or use of the Solution by you that is used by us in an aggregate and anonymised manner, including to compile statistical and performance information related to the provision and operation of the Solution.
- 6.2 You grant us a worldwide, non-exclusive, perpetual, transferable, irrevocable, royalty free, fully paid-up licence to use and sublicense any suggestions, comments and feedback about the Solution you provide to us.

## **7. Suspension and termination**

- 7.1 We may suspend or terminate your access to the Cloud Service and any support services or documentation related to the Solution at any time with or without notice to you if:
  - (a) we reasonably believe you are in breach of these Terms of Use;
  - (b) we receive notice to do so from the Account Owner (if applicable);
  - (c) the Account Owner's access is suspended or terminated under the Contract; or
  - (d) otherwise at our discretion.
- 7.2 Your user account and access to the Cloud Service will automatically terminate if:
  - (a) the Contract expires or terminates; or
  - (b) your employment or engagement with the Account Owner ends (if applicable).

## **8. Warranty disclaimer and limitation of liability**

- 8.1 We adopt commercially reasonable efforts to protect and preserve data that you input into, and the output from, the Solution, but accept no liability for any loss of or damage to it. You are responsible for retaining backup copies of such data.
- 8.2 To the fullest extent permitted by law and subject to clause 8.3:
  - (a) the Solution and all other services, documentation and materials are provided on an "as is" basis and without warranty of any kind, either express or implied (whether by common law, statute or otherwise), including without limitation warranties of merchantability, fitness for a particular purpose and non-infringement; and
  - (b) in no event will we or our licensors be liable to you or any third party arising out of or in connection with the following, however caused, even if we have been advised as to the possibility of such losses being incurred:
    - (i) these Terms of Use or your use of the Solution;
    - (ii) any results obtained from the use of the Solution, and for conclusions drawn from such use;
    - (iii) any error or defect in the Solution;
    - (iv) any training or other services provided in connection with the Solution.
- 8.3 To the extent permitted by law, we are not liable to you (or any party claiming through you, including the Account Owner), in tort, contract or otherwise for:
  - (a) use of the Solution in combination with any software, equipment, products, processes or materials not permitted by these Terms of Use;
  - (b) any interruption in the supply, or the suspension or discontinuance, of the Solution;
  - (c) use of the Solution other than as directed or approved by us in writing or otherwise in any manner not contemplated by these Terms of Use;

- (d) any breach of any of the terms of these Terms or any negligence, wilful misconduct or fraudulent act or omission by you;
- (e) any loss of profits, opportunity, revenue, data, goodwill, business or anticipated savings, pure economic loss, loss of value of equipment (other than cost of repair) or expectation loss; or
- (f) any indirect, consequential, special, punitive or exemplary loss or damage, even if such loss or damage was reasonably foreseeable, arose naturally or was in the contemplation of the parties, resulting from access or use of the Solution.

**9. Changes to these Terms of Use**

- 9.1 We may make changes to these terms from time to time.
- 9.2 If the change increases your obligations or decreases your rights under these Terms of Use, the change will not take effect until you expressly accept the updated terms. For all other changes, your continued use of the Solution is deemed acceptance of the updated terms.

**10. General**

- 10.1 These terms are governed by the laws and the parties submit to the non-exclusive jurisdiction of the courts, of the place specified in the Contract.
- 10.2 No forbearance, delay or indulgence by a party in enforcing the provisions of these Terms of Use will prejudice or restrict the rights of that party, nor will any waiver of those rights operate as a waiver of any subsequent breach.
- 10.3 If any part of these Terms of Use is or becomes invalid, that part will be severed from the Agreement and such invalidity will not affect the validity of the remaining provisions of these Terms of Use.