

# STARTUP GENIUS INC. & FINDINGGENIUS.COM TERMS OF SERVICE, PRIVACY POLICIES AND MEMBERSHIP AGREEMENT

**Notice Date: July 1, 2019.**

Welcome to Finding Genius (also known as “Startup Genius Inc.”, and/or FindingGenius.com and hereafter identified as “we,” “us,” “our”) and thank you for using our products and services (“Services”).

The following Terms and Conditions of Use (“Terms”) govern the use of the Services for paying and non-paying Startup Genius customers, except for enterprise customers who have entered into a written Startup Genius Software as a Service Enterprise Agreement with us (“Enterprise Agreement”). If you are a Startup Genius enterprise customer who has entered into an Enterprise Agreement, your use is governed by the Enterprise Agreement executed by you and Startup Genius; if no such Enterprise Agreement is in place, your use is governed by these Terms in existence at the beginning of your then-current subscription period.

## **1. ACCEPTANCE**

The Services are offered subject to your acceptance of these Terms, our Privacy Policy, and any additional terms and policies (including operating rules, guidelines and procedures) that may apply depending on your particular use of the Services, including the joining of and subscribing to Groups and their own Terms of Service within Startup Genius.

**By using the Services or by clicking on an acceptance box for these Terms, you are agreeing to be bound by these Terms, our Privacy Policy, including Use of Your Media terms and all other applicable terms and policies. If you do not agree with these Terms and policies, do not use or access the Services or click on the acceptance box.**

If you will be using the Services on behalf of a company or any other entity, you agree to these Terms on behalf of both you individually as well as that entity and you represent that you have the authority to do so. In such case, “you” and “your” may and/or will refer to that entity. Additionally, since the Services are available only to individuals who are at least 13 years old, you represent and warrant that you are at least 13 years old and take full responsibility for the selection and use of the Services and maintain compliance with all legal obligations for such use including The Child Online Privacy Protection ACT (COPPA - <https://www.ftc.gov/tips-advice/business-center/privacy-and-security/children%27s-privacy>) These Terms are void where prohibited by law, and the right to access the Services is revoked in such jurisdictions.

## **2. REGISTRATION**

In order to use certain features of the Services, you may be required to register for a Services subscription. You warrant that any registration information (such as name, contact information, or other information) you submit to Startup Genius is accurate, complete, and not misleading, and you agree to keep such information up to date. Failure to do so constitutes a breach of these Terms and may result in immediate termination of your account. To the extent you are able to select a “user name,” “Group or Community name,” campaign, or URL, you may not (i) select or use a name or identifier that is a name of another person or entity with the intent to impersonate

that person or entity; (ii) select or use a name or identifier that creates confusion in end user and others as to your own identity; (iii) use a name or identifier that is subject to any rights of a person or entity other than you without appropriate authorization; or (iv) use a name or identifier that is offensive, vulgar, obscene, or unlawful. We reserve the right, in our sole discretion, to cancel or refuse use and/or registration of any name or identifier we believe violates these Terms, our policies, or the law. You shall be responsible for maintaining the confidentiality of your password and other account information. Your login must only be used by one person; a single login shared by multiple people is not permitted. You are responsible for maintaining the security of your Startup Genius usernames and passwords. Startup Genius is not liable for any loss or damage from your failure to comply with this Section 2. We may use your registration information and any technical information about your use of the Services to tailor its presentations to you, facilitate your movement through the Services, communicate separately with you or publish the fact that you are a user of our services.

### **3. YOUR CONTENT.**

As between you and Startup Genius, you retain ownership of the intellectual property rights of the content you submit into us and/or the Services (“Your Content”), except for the limited rights that enable us to perform the Services. In short, what’s yours is yours, but we do need certain permissions from you so that our processing, maintenance, storage, technical reproduction, back-up, distribution, and related handling of Your Content does not infringe applicable copyright and other laws. Therefore, in order to perform the Services, you grant us a non-exclusive, worldwide, royalty-free, transferable, and irrevocable (for so long as Your Content is stored with us) license to use, reproduce, and display Your Content as reasonably necessary to provide you with the Services. You are responsible for maintaining, protecting, and making backups of Your Content. To the maximum extent permitted by applicable law, we will not be liable for the loss or corruption of Your Content.

### **4. OUR CONTENT.**

Using the Services does not give you ownership of any intellectual property rights in the Services. You agree that all Startup Genius content and materials delivered via the Services or otherwise made available by Startup Genius and/or our Partners, (collectively, “Our Content”) are protected by copyrights, trademarks, service marks, patents, trade secrets, or other proprietary rights and laws. Except as expressly authorized by Startup Genius in writing, you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit, or create derivative works of Our Content. Reproducing, copying, or distributing any of Our Content and/or Startup Genius design elements for any other purpose is strictly prohibited without our express prior written permission. Use of Our Content for any purpose not expressly permitted in these Terms is prohibited. Startup Genius reserves any rights not expressly granted in these Terms.

### **5. USE OF THE SERVICES.**

You represent and warrant that (i) your use of the Services will comply with all laws and regulations; (ii) Your Content will not infringe or violate any third-party intellectual property rights or any laws or regulations (including, without limitation, obscenity, defamation, and privacy laws); (iii) if you use the Services on behalf of any third party, you have all necessary authorizations; and (iv) your use of the Services will not conflict with any obligations you have to any third party. We reserve the right, in our sole discretion, to remove, modify, prevent access to, or refuse to display Your Content that we believe violates these Terms, our policies, or the law.

## **6. ACCOUNTS AND FEES.**

In the event you are an Advisor invited to Startup Genius by an Active Registered Member, Startup Genius may offer you a limited Membership subscription that you may use for a limited amount of time, not to exceed thirty (30) days. At any time, you may upgrade to any of Startup Genius's paid subscriptions. If you are a paying user of the Services, you shall pay Startup Genius Service fees in accordance with this Section 6 and our pricing policy located at either and/or [www.FindingGenius.com](http://www.FindingGenius.com) ("Fees"). You will be billed for your first membership fee and/or subscription term immediately upon upgrading to a paid subscription. Subscriptions and/or membership Fees will automatically renew for a period equal in length to the preceding period. All Fees will be invoiced in advance (on a monthly or annual basis depending upon purchase), and the credit card last used by you for a transaction will automatically be charged at the start of each period. All Fees are non-refundable—without limitation, we shall provide no refunds or credits for partial use of Service, for upgrades or downgrades, or for unused portions of subscriptions. For any subscription and/or membership upgrade, the credit card last used by you for the transaction will automatically be charged the new Fee on your next billing cycle. We reserve the right to change the Fees and to institute new charges and Fees at the end of each period. Unpaid Fees are subject to a finance charge of 1.5% per month or the maximum permitted by law, whichever is lower, plus all expenses of collection. You shall be responsible for all taxes, levies, or duties associated with the Services. All inquiries related to billing and credit card charges should be made in writing to ATTN: Billing/Invoices, Startup Genius Inc. dba FindingGenius, 12677 Alcosta Blvd Suite 250(BRIIA), San Ramon, CA 94583

## **7. CHANGES TO THE TERMS**

We may amend these Terms from time to time by posting an amended version in the Services and on our website. If you are a current paying user of the Services, these Terms will continue under their original provisions for your original subscriptions, and the amended version will become effective at the start of your next Startup Genius subscription period (including any new subscription or any automatically renewed subscription). Your use of the Services after an amended version becomes effective will confirm your acceptance and consent of that amended version. It is your responsibility to check the Services or our website (regularly, if a Free Account user, or prior to the start of your next Startup Genius subscription period, if any other user) for amended versions of these Terms and to review any changes. These Terms may not be amended in any other way except through a written agreement executed by both you and an authorized representative of Startup Genius Inc. Notwithstanding the foregoing, we may amend our Privacy Policy or all other auxiliary policies at any time by posting amended versions on our website; the amended versions will become effective immediately upon posting.

## **8. CHANGES TO SERVICES**

Startup Genius is constantly innovating and evolving the Services in order to provide the best possible experience for our users. You acknowledge and agree that the form and nature of the Services may change from time to time without notice. Changes to the form and nature of the Services may include, without limitation, the alteration or removal of a functionality or aspect of the Services. You agree that we shall not be liable to you or to any third party for any modification, suspension or discontinuance of any part of the Services. You also agree that we may create limits on certain features and services or restrict your access to parts of the Services without notice or liability. (For example, if you use our Free subscription, you will not enjoy all of the benefits provided to subscribers of paid subscription.)

## **9. ANTI-SPAM AND E-MAIL POLICY.**

Startup Genius expressly forbids all SPAM (the term "SPAM" meaning the sending of unsolicited e-mail to parties unknown to the sender). If you are found to be using the Services for SPAM, your account will be subject to immediate termination. The Services may only be used in connection with e-mail lists for which recipients have voluntarily registered. Using the Services to send e-mail to an address you obtain without the consent of the addressee is a violation these Terms. You are prohibited from importing e-mail addresses for persons who have not affirmatively and clearly elected to receive your mailings. For clarity, you will only send e-mail to persons who have willingly signed up to receive your mailings. If we receive complaints about your activities under this Section 9, your account may be subject to immediate termination. You will not send e-mail under any company or organization name other than your own company/organization, and you will not send e-mail with fraudulent or misleading header or source information. You are fully responsible for the contents of

your messages and the consequences of any such messages. We shall have no responsibility or liability for messages or other content that is created by you. You shall not send, post, distribute or disseminate any defamatory, obscene, or otherwise unlawful messages, material, or information, including another person's proprietary information (including trademarks, trade secrets, or copyrighted information) without express authorization from the rights holder. Startup Genius will cooperate with legal authorities in releasing names and IP addresses of users who are involved in SPAM or illegal activities.

## **10. OTHER RESTRICTIONS**

You shall not use any "deep-link," "page-scrape," "robot," "spider," or other automatic device, program, algorithm, or methodology, or any similar or equivalent manual process (i) to access, acquire, copy, or monitor any portion of the Services or Our Content; (ii) to reproduce in any way or circumvent the navigational structure or presentation of the Services or Our Content; or (iii) to obtain or attempt to obtain any materials, documents, or information through any means not purposely made available through the Services. Additionally, you shall not use any device, software, or routine to interfere or attempt to interfere with the proper working of the Services or any transaction being conducted on the Services. We reserve the right, to bar any such activity, refuse, cancel, and/or suspend use of the Services by you and/or others.

You shall not attempt to gain unauthorized access (i) to any portion or feature of the Services, (ii) to any systems or networks connected to the Services, (iii) to any Startup Genius server, or (iv) to any of the services offered on or through the Services, by hacking, password "mining", or any other illegitimate means.

You shall not probe, scan, or test the vulnerability of the Services or any network connected to the Services, nor breach the security or authentication measures on the Services or any network connected to the Services. You shall not reverse look-up, trace, or seek to trace any information on any other user of or visitor to the Services or any other customer of Startup Genius, or exploit the Services or any service or information made available or offered by or through the Services.

You shall not use the Services to perform DDoS attacks, distribute computer viruses, or transmit any software or application that contains features harmful to any network. You shall not take any action that imposes an unreasonable or disproportionately large load on the infrastructure of the Services or Startup Genius's systems or networks, or any systems or networks connected to the Services. In the event of such actions, we reserve the right to implement measures to ensure the quality and availability of the Services for all other Startup Genius users.

You shall not forge headers or otherwise manipulate identifiers in order to disguise the origin of any message or transmittal you send to Startup Genius or send while using the Services. You shall not, in connection with the Services, pretend (e.g. through impersonation or other means) that you are any other individual or entity. You shall not remove any identifying language such as "Powered by Startup Genius " or other similar message from the Services and/or our Partners. Any modification of Startup Genius's navigation bar(s), via Custom CSS or other means, is strictly prohibited. Such modifications include, without limitation, resizing, moving, or removing the menu bar.

You are prohibited from making changes to your Startup Genius Group and/or Community in order to recycle the Group and/or Community for a new or different use. Such changes include, but are not limited to, changing the Group and/or Community name, changing the Group and/or Community theme or focus, changing the language, changing the URL, or deleting a substantial portion of Group and/or Community members in order to create a new Group and/or Community. Any attempt to recycle a Group and/or Community is a violation of these Terms of Use and Service; Startup Genius will determine such violations in its sole discretion.

You are prohibited from transmitting any personal identifiable information through the Services, which may include, but not be limited to, any information about you or another person that may relate to health or medical conditions, social security numbers or national identifiers, credit card, bank account or other financial information, information concerning trade union membership, sex life, criminal charges or convictions, religious beliefs, racial or ethnic origin, or other sensitive matters.

You shall not abuse or threaten to abuse (verbally, physically, or in writing) any Startup Genius user, customer, employee, or agent. You are prohibited from posting submissions or using the Services in such a way that damages the image or rights of Startup Genius, other Startup Genius users, or third parties.

## **11. THIRD PARTY SITES**

The Services may allow you to link to other websites or resources on the Internet, and other websites or resources may contain links to other Startup Genius internal Groups and/or website(s) and may or may not include Startup Genius Services. These other websites may not be under our control, and you acknowledge that Startup Genius is not responsible or liable for the content, functions, accuracy, legality, appropriateness or any other aspect of these websites or resources. The inclusion of any such link does not imply endorsement by Startup Genius. You further acknowledge and agree that we shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any content, goods, information, or services available on or through any such website or resource.

## **12. INDEMNIFICATION**

You are responsible for all of your activity in connection with the Services and shall defend, indemnify, and hold harmless Startup Genius and each of its employees, contractors, directors, suppliers and representatives from all liabilities, damages, losses, settlements, claims, actions, demands, costs and expenses, including attorneys' fees, that arise from or in connection with your (i) use or misuse of the Services, (ii) use or misuse of the Services by a third party using your account (whether or not authorized by you) (iii) access to any part of Startup Genius and the

Services, (iv) Your Content, or (v) violation of these Terms.

### **13. WARRANTY DISCLAIMER**

THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. STARTUP GENIUS MAKES NO WARRANTY THAT (I) THE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, (II) THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE, OR (III) THE RESULTS OF USING THE SERVICES WILL MEET YOUR REQUIREMENTS. SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF IMPLIED WARRANTIES. IN SUCH JURISDICTIONS, THE FOREGOING DISCLAIMERS MAY NOT APPLY TO YOU INSOFAR AS THEY RELATE TO IMPLIED WARRANTIES.

### **14. LIMITATION OF LIABILITY**

IN NO EVENT SHALL STARTUP GENIUS, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, VENDORS OR SUPPLIERS BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL THEORY WITH RESPECT TO THE SERVICES (OR ANY CONTENT OR INFORMATION AVAILABLE THROUGH THE SERVICES): (I) FOR ANY LOST PROFITS OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, EVEN IF FORESEEABLE, (III) FOR ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGARDLESS OF THE SOURCE OF ORIGIN), (IV) FOR ANY ERRORS OR OMISSIONS IN ANY CONTENT OR INFORMATION OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF YOUR USE OF ANY CONTENT OR INFORMATION POSTED, E-MAILED, TRANSMITTED OR OTHERWISE MADE AVAILABLE AT OR THROUGH THE SERVICES, OR (V) FOR ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) US\$500.00. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

### **15. TERMINATION BY YOU**

You are solely responsible for properly cancelling your subscription. You can cancel your subscription at any time by clicking on the Profile link in the dropdown menu under Client's username and then by clicking "Cancel Account" within the dropdown menu under "Plans, Billing, & Invoices." No other form of cancellation (such as phone or e-mail) will be valid. If you cancel the Services before the end of your current subscription period, the cancellation will take effect immediately, and Your Content will be immediately deleted from the Services—this information cannot be recovered once your subscription is cancelled. You will not be charged for any subsequent subscription periods. For clarity, amounts paid are non-refundable and if your account is canceled in the middle of a subscription period, you forfeit all amounts paid.

### **16. TERMINATION BY US**

We may restrict, suspend, or terminate the Services to you in our Sole Discretion including but not limited to (i) if you fail to comply with these Terms or our policies (including without limitation, failure to pay any fees owed by you in relation to the Services) (ii) if you use the Services in a way that creates or could create liability for us, (iii) if you interfere with other's use of the Services, (iv) if a law enforcement, judicial body, or other government agency requests us to do so, or (v) if we need to investigate suspected misconduct by you. Any such restriction, suspension, or termination shall be made by us in our sole discretion, and we will not be responsible to you or any third party for any damages that may result or arise out of such restriction, suspension, or termination of your

account and/or access to the Services. In the event of an urgent matter, we reserve the right to take immediate action without notice. Additionally, unless you are a paying user not in default of payment, we reserve the right to terminate and delete your account if you have not accessed the Services for a period of 365 days or longer.

## **17. EFFECT OF TERMINATION**

Upon termination by either you or Startup Genius, (i) all of Your Content will be immediately deleted from the Services, (ii) you will no longer access (or attempt to access) the Services, (iii) all outstanding fees owed to Startup Genius will become immediately due and payable, and (iv) we shall have no obligation to retain any of Your Content. You are solely responsible for exporting Your Content from the Services prior to termination of the Services.

All provisions of these Terms that by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, and limitations of liability.

## **18. EXPORT AND TRADE CONTROLS.**

You agree not to import, export, re-export, or transfer, directly or indirectly, any part of the Services or any information provided on or through the Services except in full compliance with all United States, foreign and other applicable laws and regulations.

## **19. ELECTRONIC COMMUNICATIONS AND NOTICES.**

You hereby consent to receive electronic communications from us and agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. Electronic communications may be in the form of e-mails sent by us to the e-mail address associated with your account or communications posted by us on the Startup Genius website, your "My Account" page, or the Services you utilize.

All notices to Startup Genius must be addressed in writing to: Startup Genius Inc, dba FindingGenius, 12677 Alcosta Blvd Suite 250(BR1IA), San Ramon, CA 94583. Startup Genius may provide notices to you via the e-mail address associated with your account or through your Services account.

## **20. RESOLVING DISPUTES**

We want to ensure that you have an excellent experience with Startup Genius. If you have a problem or concern, we encourage you to first contact our Support team to try to resolve any issues. However, in the event of formal proceedings, you and Startup Genius agree that these Terms shall be governed by and construed in accordance with the laws of the state of California, as if made within California between two California residents, and agree to submit to the exclusive jurisdiction and venue of the state and Federal courts located in San Francisco, California. Notwithstanding the foregoing sentence, (but without limiting either party's right to seek injunctive or other equitable relief immediately, at any time, in any court of competent jurisdiction), any disputes arising with respect to these Terms shall be settled by arbitration in accordance with the Comprehensive Arbitration Rules of the Judicial Arbitration and Mediation Service, Inc. ("JAMS") by three arbitrators appointed in accordance with such Rules. The written decision of the arbitrators shall be final and binding on the parties and enforceable in any court. The arbitration proceeding shall take place in San Francisco, California, using the English language.

**YOU ALSO AGREE TO RESOLVE DISPUTES WITH US ONLY ON AN INDIVIDUAL BASIS, AND AGREE NOT TO BRING A CLAIM AS A PLAINTIFF OR A CLASS MEMBER IN A CLASS,**

CONSOLIDATED, OR REPRESENTATIVE ACTION. CLASS ARBITRATIONS, CLASS ACTIONS, PRIVATE ATTORNEY GENERAL ACTIONS, AND CONSOLIDATION WITH OTHER ARBITRATIONS ARE NOT ALLOWED.

If you are a federal, state, or local government entity in the United States using the Services in your official capacity and legally unable to accept the controlling law, jurisdiction or venue provisions above, then those provisions do not apply to you. For such U.S. federal government entities, these Terms and any action related thereto will be governed by the laws of the United States of America (without reference to conflict of laws) and, in the absence of federal law and to the extent permitted under federal law, the laws of the State of California (excluding choice of law).

## **21. MISCELLANEOUS**

The failure of either party to exercise or enforce any right contained in these Terms, is not a waiver of either parties' right to do so later. Startup Genius shall not be liable for any failure to perform its obligations in these Terms where such failure results from any cause beyond Startup Genius's reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation. If any provision of these Terms is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that these Terms shall otherwise remain in full force and effect and enforceable. These Terms are not assignable, transferable, or sub-licensable by you, except with our prior written consent. We may transfer, assign, or delegate these Terms and their rights and obligations without consent. Both parties agree that these Terms are the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of these Terms, and that all modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of these Terms and you do not have any authority of any kind to bind Startup Genius in any respect whatsoever.

## **22. USE OF YOUR MEDIA**

You agree and hereby grant Startup Genius Inc, its assigns, licensees, successors in interest, and legal representatives, an irrevocable, non-exclusive, worldwide, and royalty-free license and right to use any photo, picture, video, audio of you and/or likeness of you, and/or compiled collection thereof, for promotional, commercial and/or non-commercial purposes, including, but not limited to on-line and/or print advertising, posting on social media websites. I am of full age and competent to sign this release. I agree that this Agreement shall be binding on me, my legal representatives, heirs, and assigns. I have read this Agreement and am fully familiar with its contents.