

This End User License Agreement ("EULA") forms a binding agreement between UPG Solutions, LLC ("UPG" or "we") and you and your company or organization ("User" or "you"). By using the Service (as defined below), you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, do not log onto or otherwise use the Service. You represent to us that your use of the service is authorized by a client of UPG for the purpose of participating in Projects (as defined below).

## 1. Use of Service, Restrictions

**1.1 Permitted Use.** We provide the RFP 360 subscription service (the "Service") to enable users to create, share, upload or attach information to, and edit "Requests for Proposal (RFPs)" and "Proposals" that are stored on the Service (collectively, "Projects"). "Users" are those individuals that are authorized by clients of UPG to use the Service solely for the purpose of participating in Projects. When you receive access credentials from UPG or a UPG client, you may use the Service solely to view and submit content to Projects.

**1.2 Prohibited Use.** You specifically agree not to: (a) "frame," distribute, resell, or permit access to the Service by any third party; (b) permit multiple end users to access the Service using shared login credentials (i.e., a shared email address and password); (c) use the Service other than in accordance with the instructions or documentation we provide and in compliance with applicable federal, state, and local laws; (d) interfere with the Service or disrupt any other user's access to the Service; (e) reverse engineer, attempt to gain unauthorized access to the Service, or attempt to discover the underlying source code or structure of the Service; (f) submit to the Service any content or data that is false, misleading, defamatory, threatening, offensive, or infringing of intellectual property rights, or that contains mass mailings or any form of "spam"; (g) submit to the Service any disabling code, malicious code, virus or other malware; (h) engage in data scraping or data extraction outside of the ordinary features of the Service; or (i) register for or use our Service to monitor or test the availability or performance of the Service, or for other benchmarking or competitive purposes.

**1.3 API's and Software.** We may, from time to time, make available application programming interfaces (APIs), HTML scripts, data import tools, or other software code or executables as part of the Service (the "User Software"). We grant you a non-exclusive, non-transferable, revocable license during the Term solely to use the User Software to access and use the Service in compliance with the terms of this EULA. Except as expressly permitted herein, you agree not to distribute or disclose the User Software to any third party. The User Software is deemed a part of the Service for purposes of this EULA.

**1.4 Responsibility for Accounts.** Each set of login credentials (i.e., email address and password) for the Service may be used only by a single, individual User. You are

responsible for all use of the Service that occurs under your user account, and you agree to notify us of any unauthorized access of which you become aware.

## 2. Intellectual Property.

**2.1 Our IP.** To provide the Service and access to related reporting reflecting the results of the Service, we use proprietary software, know-how and information that embody methods, algorithms, inventions, information, logos, and other elements that we use to provide our Service and that are protected (or qualify for protection) under US patent, trademark, copyright or trade secret law (the "UPG IP"). UPG and its licensors own the UPG IP, and all related intellectual property rights and all content in the Service other than Your Content and Community Content.

**2.2 Your Content Submitted to Projects.** When you enter information, files, or images ("Your Content") into Projects, you grant us a non-exclusive, royalty free, worldwide license to use Your Content in order to make the Service available in accordance with the online documentation we provide for the Service, including by displaying Your Content to other Users (subject to the sharing privileges selected for the applicable Project) and making it available for download and modification by such authorized Users.

**2.3 Community Content.** Your Content may include comments, suggestions, leads, or other content you post in our online help portal, on public portions of our website and in our social media forums ("Community Content"). You grant us a perpetual, irrevocable, royalty free, worldwide license to (a) display, distribute, reproduce, reformat, make available for download, modify, and use Community Content, and (b) sublicense these rights to other users of our website and the Service. In addition, you agree that we may identify you as the source of Community Content (using the name and contact information you provide us).

**2.4 Feedback.** We are grateful for any input you provide, but we need to maintain our intellectual property rights in the Service. Accordingly, you agree that all feedback and suggestions for enhancement that you provide to us concerning the Service ("Feedback") will be owned by us without any obligation of compensation to you.

**3. Limited Warranties.** UPG MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER WRITTEN, ORAL OR IMPLIED, REGARDING THE SERVICE, INCLUDING ANY IMPLIED WARRANTY OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES IMPLIED FROM A COURSE OF DEALING OR USAGE OF TRADE, ALL OF WHICH UPG DISCLAIMS. WE DO NOT WARRANT THAT THE SERVICE WILL BE ERROR-FREE OR OPERATE WITHOUT INTERRUPTION.

**4. Term.** The term of this EULA will begin on the date of your first use of the Service to access a Project and will terminate upon the conclusion of all active Projects in which you participate. After termination, any future Projects in which you

participate will be subject to the version of this EULA in effect at the time you start participating in a future Project.

5. **Termination.** Either Party may terminate this EULA for breach of a material obligation in this EULA, if, after providing written notice to the defaulting Party of such breach, such defaulting Party fails to cure such breach within 30 days thereafter; provided, however, such cure period will not apply with respect to payment breaches. Sections 1.2 and 6 through 9 of this EULA (as well as UPG's rights with respect to any amounts owed by Client), will survive the termination or expiration of this EULA.

6. **Confidentiality.** Each party agrees not to disclose, duplicate, publish, release, transfer or otherwise make available to third parties, except Users, the other party's Confidential Information without the other party's prior written consent. "Confidential Information" means any financial, technical, or business information that a party designates as confidential at the time it is disclosed to the other party, or that a party reasonably should understand to be confidential based on the nature of the information or the circumstances surrounding its disclosure. The specific features of the Service, the documentation we provide to you in connection with the Service, and the User Software are our Confidential Information. Your Confidential Information includes Your Content. Confidential Information does not include any information that: (i) is or becomes generally known to the public without breach of a party's confidentiality obligation under this EULA; (ii) was independently developed by a party without breach of a party's confidentiality obligation under this EULA; or (iii) is received from a third party who obtained such Confidential Information without breach of any obligation owed to the other party. When this EULA terminates, we will use commercially reasonable efforts to remove Your Content from the Service's active environment.

7. **Data Privacy and Data Security.** Your use of the Service is governed by our Privacy Policy (<http://www.rfp360.com/privacy>). We may update our Privacy Policy from time to time. Our Privacy Policy describes our practices regarding the collection, use and disclosure of personal information that we obtain about you in connection with the Service. When you enter information into Projects, it may be viewed, edited, modified, and/or deleted by other users who have been invited to share such Projects (subject to the access and use privileges for a Project established by its creator). We maintain a commercially reasonable data

security program to protect Your Content and our Service. We will promptly notify you of any breach of our Service that may affect Your Content. You are responsible for your systems, internet access, and the browser or other applications that you use to access the Service.

8. **Limitation of Liability.** Under no circumstances will UPG be liable for any consequential, indirect, special, punitive, exemplary or incidental damages of any kind, whether foreseeable or unforeseeable (including but not limited to, claims for lost revenue, lost profits, loss of data, loss of goodwill, loss of use of money or use of services, interruption in the use or availability of data, stoppage of other work or impairment of other assets), arising out of the purported breach or failure of any express or implied warranty, breach of contract, negligence, strict liability in tort or otherwise. In no event will UPG's liability under this EULA exceed the subscription fees received by UPG from the Client engaging in the Project for which you have been granted access during the 3 months preceding the applicable claim.

9. **General.** The parties agree that Missouri law, without reference to rules governing conflict of laws, will apply to this EULA and any dispute between the parties related thereto. The parties agree to exclusive jurisdiction and venue in the federal and state courts of Missouri for any dispute arising under this EULA. Neither Party will be responsible for any failure to perform its obligations under this EULA (other than obligations to pay money) if such failure is caused by events beyond the reasonable control of either party such as flood, fire, theft, communications failure, etc. We are an independent contractor under this EULA. Our failure to enforce strict performance or compliance with any provision of this EULA will not constitute a waiver of our rights to subsequently enforce such provision or other provisions of this EULA. If a court of competent jurisdiction finds any provision of this EULA to be illegal or unenforceable, that provision will be eliminated to the minimum extent necessary so that this EULA will otherwise remain in full force and effect. This EULA contains the entire understanding of the parties regarding its subject matter and supersedes all prior agreements between the parties, both oral and written. This EULA will not be amended except by mutual written consent of both parties. You may not assign this EULA by operation of law or otherwise without our prior written consent.

*Last Updated, April 8, 2019*