

These Terms of Service form a binding agreement (the "Agreement") between UPG Solutions, LLC ("UPG" or "we") and your company or organization ("Client" or "you") effective as of the date of your signature on a RFP360 quote for services or your consent to an order form made available by email or on our website at <http://rfp360.com> (each, an "Order"). You represent to us that you have the authority to bind your company or organization to this Agreement.

**1. Service.** We provide the RFP360 subscription service ("Service") described in your Order which is incorporated into this Agreement by this reference. You agree to provide assistance and cooperation and meet any Client obligations listed in your Order. You retain us to exclusively provide the Service during the Term (as defined below and on the Order).

**2. Fees; Payment Terms.** You will pay UPG an annual subscription fee for the Service as set forth in your Order (the "Subscription Fee"). You will also pay any one time fees or costs set forth in your Order ("One-Time Fees" and together with the Subscription Fee, "Fees").

**2.1 Payment.** The Subscription Fee is due annually in advance of your use of the Service unless your Order specifies that UPG will accept monthly payments, in which case 1/12 of your fee is due on the 1<sup>st</sup> day of the applicable calendar month. One-Time Fees are due in advance of your use of the Service. When you register for the Service, you will provide us with either a valid, up-to-date credit card number or the other payment information we request. If you select credit card as your payment method, you authorize us to charge your card for Fees on the first day of your initial subscription period and each renewal subscription period and, for any additional Fees beyond your subscription fee, to charge your credit card when such fees become due and payable. You are responsible for maintaining up-to-date payment information on the Service.

**2.2 Taxes.** Fees do not include any taxes, levies, duties or similar governmental assessments, including value-added, sales, use or withholding taxes ("Taxes"). You are responsible for paying all Taxes associated with your purchases. UPG is only responsible for taxes assessable against it based on income, property, and employees.

**2.3 Late Payments.** If we cannot charge your credit card for any Fees when due because your payment information is no longer valid and up-to-date, or if we do not receive your payment when due, we may, at our election: (a) suspend your access to the Service, in which case you will be responsible for all Fees incurred during the period of suspension; (b) immediately terminate this Agreement, in which case your right to use the Service will cease; or (c) without waiving our rights to suspend or terminate your account, allow you a longer period during which to make payment, in which case you will remain responsible for all Fees incurred while we await your payment. Payments not timely received incur interest charges at the rate of 1% per month on any outstanding balance or the maximum rate allowable by law.

You agree to pay our collection costs if we are forced to hire a collection agency or attorney to collect late payments. Fees are non-refundable.

**2.4 Project Credits.** Your Order describes a subscription plan that may include a defined number of Projects. If you find you need more project credits than initially identified, please contact us to make arrangements. Project credits can be purchased individually or in bulk and we can invoice you separately or accept payment via credit card. All project credits have an expiration date. Once the expiration date has been reached, the credit is no longer valid. Credits are non-refundable. Credits are a part of the Fees for purposes of this Agreement.

### 3. Use of Service, Restrictions

**3.1 Permitted Use.** Among other features, the Service enables 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 you authorize to use the Service solely for the purpose of participating in Projects. When you establish an account, you may use the Service to (i) create, submit content to, edit and delete Projects, (ii) invite other users to view, submit content to, and/or edit Projects you create, and (iii) otherwise use the features and functionality of the Service for your internal business purposes, all subject to the terms and conditions of this Agreement. You are responsible for the acts and omissions of individuals you authorize to use the Service. All individuals accessing the Service must agree to the RFP360 End User License Agreement (the "EULA") available [here](#).

**3.2 Prohibited Use.** You specifically agree not to: (a) "frame," distribute, resell, or permit access (except for Users) 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.

**3.3 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 Agreement. 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 Agreement.

**3.4 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 accounts, and you agree to notify us of any unauthorized access of which you become aware. If you share your Projects with others, you are responsible for any of their activity on the Service that is related to your Projects.

#### 4. Intellectual Property.

**4.1 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.

**4.2 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 and its features available in accordance with the online documentation we provide for the Service to you and others you authorize, including by displaying Your Content to Users (subject to the sharing privileges selected for the applicable Project) making it available for download and modification by such authorized Users with whom you share Projects.

**4.3 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).

**4.4 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.

**5. Exclusive Remedy; Limited Warranties.** During the Term,

UPG will use reasonable efforts to provide the Service in a good and workmanlike manner. We will correct any purported breach of this Agreement by us within thirty (30) days after receiving written notice from Client concerning such breach. This will be your sole and exclusive remedy for any purported breach by UPG with respect to the Service. THIS SERVICE REMEDY IS EXCLUSIVE AND IN LIEU OF ALL OTHER 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.

**6. Term.** The term of this Agreement will begin on the Effective Date and continue for the term specified on your Order (the "Term") and will automatically renew for subsequent 24-month terms (each a "Term") unless either party notifies the other party of its intent not to renew at least 60 days before the end of the current Term. If your Order does not specify a Term, the Term will be 24 months. If we provide you with proof of concept or evaluation access ("Evaluation"), your Evaluation will automatically terminate and convert to a full subscription for Service with a Term of 24 months unless you provide us notice that you do not wish to continue the Service within 30 days of your first use of the Service.

**7. Termination.** Either Party may terminate this Agreement for breach of a material obligation in this Agreement, 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 3.2 and 7 through 16 of this Agreement (as well as UPG's rights with respect to any amounts owed by Client), will survive the termination or expiration of this Agreement.

**8. Effect of Termination.** If this Agreement terminates, all invoices and fees owed to UPG by Client will become immediately due and payable. If you terminate this Agreement for any reason other than material breach by UPG, you will pay UPG liquidated damages in an amount equal to the annual Subscription Fee multiplied by the number of years remaining in the then current Term minus any amounts paid during the current Term but before termination. You agree that the payment of such liquidated damages is reasonable compensation to UPG for the damages and injury suffered by UPG. These liquidated damages are in addition to any other remedies available at law or in equity and shall not be construed to be a penalty. You agree that if a court of competent jurisdiction makes a final determination that any part of this paragraph is unenforceable, the Court should modify that provision to the extent necessary to render it enforceable to the fullest extent permissible under applicable law.

9. **Indemnity.** UPG will defend, indemnify and hold harmless Client and its directors, officers, employees and agents from and against any and all third-party claims, demands, lawsuits, judgments, losses, or expenses (including reasonable attorneys' fees and court costs) to the extent arising out of any claim that the User Software infringes a copyright of any third party. UPG will have the right to control the defense of any third-party claim for which Client seeks indemnity and defense under this paragraph. These indemnity, defense, and hold harmless obligations will not apply to modifications made by you, use in violation of Section 3.2, purported Service defects, Client's sole remedies for which are in Section 5, or to claims for which Client has an obligation to indemnify UPG. Client will defend, indemnify and hold harmless UPG, its affiliates and their respective directors, officers, employees and agents from and against any and all claims, demands, lawsuits, judgments, losses, or expenses of any nature whatsoever (including attorneys' fees) arising directly or indirectly from or out of, or any way relating to (i) Client's use of the Software or Service, except a claim covered by the first sentence of this Section 9; (ii) Your Content and (iii) any claim against UPG by customers, vendors, Users, or Project participants of Client.

10. **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 Agreement; (ii) was independently developed by a party without breach of a party's confidentiality obligation under this Agreement; 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 Agreement terminates, we will use commercially reasonable efforts to remove Your Content from the Service's active environment.

11. **Data Privacy and Data Security.** Your use of the Service is governed by our Privacy Policy (<https://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.

12. **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 Agreement exceed the Subscription Fees received by UPG from Client during the 12 months preceding the applicable claim.

13. **Publicity.** We may list your name and logo in our promotional materials and on our website and you grant a license to use your name and logo for such purposes. You may provide written notice requesting we not identify you as a customer on our website or in our customer list, blogs, and other public communications. Additionally, you agree at no time will you publish any negative or derogatory comments about UPG or our Service.

14. **General.** The parties agree that Missouri law, without reference to rules governing conflict of laws, will apply to this Agreement 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 Agreement. Neither Party will be responsible for any failure to perform its obligations under this Agreement (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 Agreement. Our failure to enforce strict performance or compliance with any provision of this Agreement will not constitute a waiver of our rights to subsequently enforce such provision or other provisions of this Agreement. If a court of competent jurisdiction finds any provision of this Agreement to be illegal or unenforceable, that provision will be eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect. This Agreement contains the entire understanding of the parties regarding its subject matter and supersedes all prior agreements between the parties, both oral and written. This Agreement will not be amended except by mutual written consent of both parties. You may not assign this Agreement by operation of law or otherwise without our prior written consent.

*Last Updated, May 16, 2019*