

End User License Agreement (EULA)

Simplebid® End User License Agreement

This End User License Agreement (“EULA”) is a legal agreement between you (either an individual or a single entity) (“You”, “Your”) and Facility Optimization Solutions, LLC (“FOS”, “we,” or “us”). Your use of, and access to, the Simplebid® job order contracting platform, including the Simplebid Unit Price Book (“UPB”) and/or other related products (collectively, the “Platform”), and the features, functions, and services offered through the Platform (collectively, the “Services”), is subject to Your prior acceptance of this EULA, as may be amended from time to time by FOS.

Scope of License. Subject to the terms and conditions contained herein including, without limitation, the restrictions below, FOS grants You a limited, revocable, non-exclusive, non-transferable license to use the Platform. This License is also subject to such other restrictions as may be contained in the Privacy Policy:

- a. You will not permit any person other than Yourself and if you are a single entity, employees who have accepted this EULA (“Authorized Users”) to access and use the Platform and/or Services;
- b. If you are an Authorized User of the entity/agency (the “User Agency”) engaged by FOS to provide this Platform, You will not use the Platform or Services for any purposes other than the User Agency’s internal business purposes in support of the User Agency’s program;
- c. If You are a contractor or Authorized User of a contractor participating in a User Agency job order contracting program, You will not use the Platform or Services for any purposes other than Your internal business purposes to provide job order contract task order documents exclusively to the User Agency;
- d. You may not resell, sublicense, transfer, re-distribute, allow access to or otherwise provide or make available for any purpose any component of the Platform to any person, firm or entity except as expressly set forth herein;
- e. You may not alter, reverse engineer, disassemble, decompile, circumvent or disable any code, feature or security or technologic measure that effectively controls access to the Platform, or otherwise engage in any conduct designed or intended to interfere with the operation of the Platform, or permit or authorize any third party to do so.
- f. You shall not, and shall cause the Authorized Users not to, (i) use the Platform and/or Services to store or transmit computer viruses, worms, time bombs, Trojan horses and other harmful or malicious code, routines, files, scripts, agents or programs, (ii) use the Platform and/or Services to store or distribute any information, material or data that is harassing, threatening, infringing, libelous, unlawful, obscene, or which violates the privacy or intellectual property rights of any third party, (iii) access or use the Platform and/or Services for any benchmarking or competitive purposes, including, without limitation, for the purpose of designing and/or developing any competitive products or services, (iv) sell, resell, rent, lease, offer any time sharing arrangement, service bureau or any service based upon the Platform and/or Services, (v) interfere with or disrupt the integrity or performance of the Platform and/or Services or third-party data contained therein, (vi) attempt to gain unauthorized access to the Platform and/or Services or any associated systems or networks or (vii) modify, make derivative works of, disassemble, decompile or reverse engineer the Platform and/or Services or any component thereof.

DISCLAIMER. FOS is not responsible for use or misuse of the Platform or Services by any party or harm or damages that may result from use or misuse of the Platform or Services. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY OF THIS EULA, OR THE PRIVACY POLICY, THE PLATFORM IS PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND AND EXCEPT TO THE EXTENT REQUIRED BY APPLICABLE LAW, FOS HEREBY DISCLAIMS ALL WARRANTIES OF ANY TYPE, EXPRESS OR IMPLIED, WITH RESPECT TO THE PLATFORM AND ANY UPB DATA INCLUDED IN THE PLATFORM, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR OR ORDINARY PURPOSE, NON INFRINGEMENT, MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION, FEATURES, PERFORMANCE LEVELS, SUPPORT RESOURCES, AND FREEDOM FROM COMPUTER VIRUS. TO THE EXTENT A WARRANTY MAY NOT BE DISCLAIMED AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM REQUIRED UNDER SUCH LAW. NO ORAL OR WRITTEN INFORMATION OR ADVICE PROVIDED BY FOS AND/OR ITS AGENTS OR EMPLOYEES, SHALL CREATE A WARRANTY. FOS DOES NOT WARRANT THAT THE PLATFORM WILL MEET ALL YOUR REQUIREMENTS, THAT THE OPERATION OF THE PLATFORM WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL PLATFORM DEFECTS WILL BE CORRECTED.

Ownership of Platform. The Platform, including the UPB, contains copyrighted material, trademarks and other intellectual property that is owned or licensed by FOS. FOS retains all title, interest, ownership rights and intellectual property rights in and to the Platform and/or Services and reserves all rights not expressly granted to You in this EULA. The Platform is licensed to You, not sold. Updates. FOS may, from time to time, develop new versions, patches, bug fixes, updates, upgrades and other modifications to improve the Platform and/or Services (“Updates”). These may be automatically installed and/or released without providing any additional notice to, or consent from, You or Your Authorized Users. All Updates are subject to the terms of this EULA.

Third Party Software. Some components of the Platform or Services (whether developed by FOS, our affiliates or third parties) (the “Third-Party Software”) may be governed by separate licenses. Your license rights with respect to Third-Party Software are defined by the applicable Third-Party Software license, and nothing in this EULA will restrict, limit, or otherwise affect any rights or obligations you may have, or conditions to which you may be subject under such Third-Party Software licenses. You agree to be bound by and subject to the terms and conditions of each applicable Third-Party Software license. If you do not agree to be bound by and subject to the terms and conditions of each applicable Third-Party Software license, You must terminate this EULA by uninstalling and destroying all copies of the Platform that are in Your and Your Authorized Users possession or control. If our rights from a licensor of Third-Party Software are limited, suspended or terminated for any reason, Your rights will also be so limited, suspended or terminated.

For U.S. Government End Users. The Platform is a “commercial item,” as that term is defined at 48 C.F.R. 2.101 (OCT 1995), and more specifically is “commercial computer Platform” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. 12.212 (SEPT 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (JUNE 1995), the Platform is provided to U.S. Government End Users only as a commercial end item and with only those rights as are granted to all other customers pursuant to the terms and conditions herein.

Export Restrictions. The Platform, Services and related technologies are subject to U.S. export control laws and may be subject to export or import regulations in other countries. You agree to strictly comply with all such laws and regulations and acknowledge that you have the responsibility to obtain authorization to export, re-export, or import the Platform and related technology, as may be required. You will indemnify and hold FOS harmless from any and all claims, losses, liabilities, damages, fines, penalties, costs and expenses (including attorney’s fees) arising from or relating to any breach by You and/or Your Users in connection with this paragraph.

Limitation of Liability. Unless prohibited by law, FOS’s liability under this EULA in connection with any claim arising out of or relating to the License, Platform and/or Services any provided in connection with this EULA shall be limited to the lesser of the amount of Your actual direct damages or \$500. Your right to monetary damages in such amount shall be exclusive of all other remedies which You may have at law or in equity against FOS, any affiliate or subsidiary of FOS, or any officer, director, shareholder, employee, consultant, agent, successor, or assign of FOS.

Account; Passwords. To access and use the Platform and/or the Services, you must register an account with FOS (the "Account"). You shall only use the username issued to You by FOS in connection with the Account, except as authorized by this EULA. If You are provided with a temporary username and/or password, You must modify the temporary credentials and create a unique username and/or password. You shall not share the Your Account username or password with anyone except as authorized by this EULA. You are responsible for maintaining the confidentiality of Your Account username and password and You are fully responsible for all activities that occur in connection with same. In the event of any breach of security, including, without limitation, access to the Platform and/or Services via Your Account by someone other than You, You agree to immediately (a) change Your password, and (b) notify FOS of the security breach. You agree that the terms of this EULA will be binding upon and govern the relationship between You and FOS. You further agree to take any and all action necessary to ensure compliance with this EULA, and You shall indemnify FOS for any and all costs, damages, losses or expenses (including attorneys' fees) incurred in respect any use of the Platform and/or Services via Your Account. FOS will not be liable for any loss or damage arising from your failure to comply with this paragraph. FOS reserves the right to terminate Your access to the Platform and/or Services at any time for any reason or no reason.

Your Data; Suggestions.

a. As between You and FOS, You own all right, title, and interest in and to Your Data. Except as provided in this subparagraph, FOS obtains no rights under this EULA from you in or to the Your Data, including any related intellectual property rights. You grant FOS a license to display, perform, execute, distribute, and modify Your Data to enable You to operate the Platform and/or Services and provide any applicable support. Further, You consent to FOS's (i) use of anonymous or de-identified versions of Your Data for the purposes of marketing the Platform and/or Services for benchmarking purposes; (ii) use of technical data and related information, including information about your browser, to facilitate the provision of software updates, product support, and other services to you (if any) related to the Platform and/or Services, and (iii) disclosure of Your Data to comply with any request of a governmental or regulatory body (including subpoenas or court orders). You agree that these rights and licenses are royalty-free, worldwide and irrevocable (for so long as the Your Data is stored in the Platform) and include a right of FOS to make the Your Data available to, and transfer such rights to, others with whom FOS has contractual relationships related to the provision of the Platform, the Services and/or any support related to same.

b. You further represent and warrant that (a) You own all right, title, and interest in and to Your Data or have the rights and permissions necessary to use Your Data in connection with the Platform and Services; and (b) You have all rights and permissions necessary to grant the rights contemplated by this EULA.

c. If you provide any suggestions regarding the Platform or the Services to FOS, we will own all right, title and interest in and to the suggestions, even if you have designated the suggestions as confidential. FOS will be entitled to use the suggestions without restriction. You hereby irrevocably assign to FOS all right, title, and interest in and to the suggestions and agree to provide FOS any assistance FOS may require to document, perfect and maintain FOS's rights in the suggestions.

Waiver of Consequential Damages. In no event shall FOS or its affiliates be liable to You for any special, indirect, consequential, or incidental damages arising out of, or as the result of the License, the Platform and/or the Services provided to You, regardless of whether arising out of a contract claim, tort claim or otherwise and whether such damages are foreseeable.

Indemnification. You assume sole responsibility for use of the License, the Platform and/or the Services by You and Your Authorized Users and You shall defend, indemnify and hold FOS, its affiliates, and their directors, officers and employees harmless from and against all liabilities, claims, and damages that arise in connection with or as a result of use of the Platform and/or Services by You or Your Authorized Users.

Right to Audit. FOS reserves the right to monitor and audit Your and Your Authorized Users' use of the Platform and/or Services.

Termination. This EULA shall continue in effect until terminated as set forth herein. This EULA may be terminated, and/or the License revoked or modified by FOS if You breach any provision of this EULA, including, without limitation, if You fail to pay applicable fees when due and FOS submitted a proper invoice. FOS shall provide seven (7) days written notice to You of termination of this EULA or revocation of any License. FOS may also terminate this EULA immediately upon notice to You if (a) FOS's relationship with a third-party provider whose software, hosting or other technology FOS

uses to provide the Platform and/or Services expires, terminates or requires FOS to change the way FOS provides the Platform and/or Services, or (b) You permit any individual to access or use Your Account username or password in violation of this EULA. Upon FOS's termination of this EULA due to Your breach, it is agreed that no refund of License Fees shall be due to You. Upon termination of the EULA, neither You nor Your Authorized Users will be authorized to use the Platform and/or Services and the License shall be immediately cancelled. In the event of termination of the EULA, upon written request by You, copies of Your Data will be delivered to You within thirty (30) days thereof; provided, that You shall pay in advance all reasonable costs of transferring copies of the Your Data to You. No termination of this EULA shall release or affect any obligations or liabilities incurred by either party under this EULA prior to the effective date of such termination. The paragraphs of this EULA under the headings "Disclaimer," "Ownership of Platform," "Limitation of Liability," "For U.S. Government End Users," "Export Restrictions," "Waiver of Consequential Damages," "Indemnification," and "Governing Law" shall survive termination of the License and this EULA. Force Majeure. FOS shall have no liability to You for any damages whatsoever arising out of or as a result of the failure by FOS to provide the Platform, Services and/or any support as a direct or indirect result of any use or circumstance beyond the reasonable control of FOS (including, without limitation, acts of God, acts of public enemy, war, accidents, fires, electrical or equipment failures, strikes, postal delays, labor difficulties, contractor difficulties, problems with telecommunications providers or database hosting entities, Internet disruption, explosions or governmental orders or regulations).

Governing Law. Unless prohibited by law, this EULA shall be construed according to, and the legal relations between the Parties shall be governed by, the laws of the State of New York, excluding its conflicts of law provisions. Unless prohibited by law, You and FOS agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Erie, to resolve any dispute or claim arising from this EULA.

Amendments. Changes to this EULA may be made by FOS by publishing revised versions of this EULA to the URL www.simplebid.net. All revisions to this EULA shall be deemed effective and binding upon You and Your Authorized Users immediately upon being published to the foregoing URL without advance notice or consent of You or Your Authorized Users.