

Terms of Service

eBOARDsolutions, Inc. (hereinafter “EBS”, “Provider”, “We”, “Us”, and similar terms of meaning) provides this web site and the services provided by or through this web site to you subject to these terms and conditions of use (these “Terms”). In these Terms we call this web site, any successor web sites (together, the “Site”) and the software we provide the “Provider Applications” or “Application”. We refer to the services provided by the Provider Applications as the “Services”.

In these Terms, our customers and their staff members who access the Services are called the “Subscriber”, or “You”, and our customers’ customers who use the Services are called “Customers”. In these Terms, all users of the Services whether they are Subscribers, Customers, or casual browsers of the Site, are called “Users”.

Please read these Terms carefully before using the Services. By accessing or using the Services you agree to be legally bound by these Terms and all terms, policies and guidelines incorporated by reference in these Terms. If you do not agree with these Terms in their entirety, you may not use the Services.

These Terms, along with the Subscriber’s Subscription order and/or Software Agreement, constitute the full agreement of the parties and are collectively referred to in these Terms as the “Agreement”.

1. **Grant of License.** Subject to these Terms, Provider hereby grants Subscriber, during the term specified in the Subscription Order or Software Agreement, a non-exclusive, non-transferable, non-assignable, non-sub-licensable license to access the Site and to use, solely for internal business purposes, the Services. Subscriber may not share, distribute or relicense the Provider Applications with or for any other person or entity.

2. **Delivery.** The subscription and license and corresponding fees shall commence for each Provider Application upon the earliest of (a) the Effective Date shown in the Subscription Order or Software Agreement for the Provider Application, or (b) the first access session or use of the Provider Application by Subscriber.

3. **Permitted and Prohibited Use.** (a) Subscriber agrees, as a condition of use of the Provider Applications and the Services, not to use the Provider Applications and Services for any purpose that is unlawful or prohibited by this Agreement, or in any manner that could damage, disable, overburden, or impair any Provider or Subscriber server, or the network(s) connected to any Provider or Subscriber server, or interfere with any other party’s use and enjoyment of any Service. No User may attempt to gain unauthorized access to any part of the Services, other accounts, computer systems or networks connected to any Provider or Subscriber server or to any part of the Services or Provider Applications, through hacking, password mining or any other means. No User may obtain or attempt to obtain any materials or information through any means not intentionally made available through the Services. Except as expressly set forth herein, no User may (i) copy, reproduce, alter, modify, transmit, perform, create derivative works of, publish, sub-license, distribute, or circulate the Services or any associated Provider Application, tool or data thereof; (ii) disassemble, decompile, or reverse engineer the Provider Applications used to provide the Services, or use a robot, spider, or any similar device to copy or catalog the content available through the Services or any portion thereof; or (iii) take any actions, whether intentional or unintentional, that may circumvent, disable, damage or impair the Services’ control or security systems, or allow or assist a third party to do so.

4. **Use of Passwords; Internet; Suspension of Service.** (a) Subscriber is responsible for providing and administering usernames and passwords for their staff access (the “Log-In Information”). Each named User must have a valid username and password for the purpose of accessing the Service. Subscriber and its Users must keep all Log-In Information strictly confidential. Log-In Information may be used only by the assigned User and may not be shared or transferred. Each User is entirely responsible for maintaining the confidentiality of that User’s username and password. Each User will be entirely responsible for any and all activities that occur under the User’s account. Each User agrees to notify the Subscriber immediately of any unauthorized use of the User’s account or any other breach of security. Provider will not be liable for any loss that a User may incur as a result of someone else using that User’s password or account, either with or without the User’s knowledge. (b) Neither Provider nor Subscriber guarantees the security of any information transmitted to or from any User over the Internet, including through the use of e-mail. Access to the Internet, if employed, is Subscriber’s and each User’s sole responsibility and the responsibility of Internet provider(s) they select. Provider does not accept any responsibility for failure of service due to Internet facilities, including related telecommunications or equipment. (c) Provider may at any time request that Subscriber suspend the access of Users to the Service and/or disable their Login Information. Customer agrees when so requested by Provider to remove such individuals promptly

and suspend their use of the Services and access to the Services. Grounds for doing are not limited but may include, for example, legal or regulatory reasons, investigation of suspicious activities, or action by authorities, or if Provider or Subscriber has reason to suspect any such User is engaged in activities that may violate these Terms of Service, applicable laws, or Subscriber policies, or are otherwise deemed harmful to Provider, Subscriber, their network or facilities, or other Users. Neither Provider nor Subscriber shall be liable to any User for suspension of Service, regardless of the grounds.

5. **Proprietary Rights.** Subscriber acknowledges that (a) Provider owns and controls all right, title and interest in the Provider Applications and all intellectual property rights relating thereto; (b) the Provider Applications and Provider's tools and infrastructure constitute valuable intellectual property of Provider; (c) Provider does not grant to Customer any right or license, either express or implied, in the Provider Applications except as specified in this Agreement, and Provider reserves all other rights; and (d) Subscriber's use of the Provider Applications shall be subject to the restrictions set forth in these Terms of Service. Provider shall be entitled to use and exploit, without restriction or charge, any ideas, improvements, suggestions, or enhancements to the Provider Applications made or provided by Subscriber, its personnel, or Users.

6. **Payment Terms.** Fees for the Services (the "**Fees**") are stated in United States Dollars, must be paid in United States Dollars, and are exclusive of out-of-pocket expenses of Provider. Unless otherwise indicated in the Purchase Summary contained in the Subscription order, the fees due are prorated and payable annually in advance. Upon expiration of the initial term, and any renewal term, this Agreement shall be automatically renewed on a year-to-year basis on the same terms as shown in this Agreement at Provider's then-current pricing, unless Subscriber notifies Provider in writing at least thirty (30) days prior to the scheduled renewal date of its intention not to renew. Provider will invoice Subscriber for the Fees at the time of execution of this Agreement, at each scheduled renewal, and upon any future Subscription order. Any and all payments made by Subscriber pursuant to this Agreement are non-refundable. Subscriber will make payment upon acceptance of each initial Subscription order and within thirty (30) days of the date of each subsequent invoice. Provider reserves the right to suspend or cancel performance of any Services if Subscriber is in default of its obligations, including any payment obligations, provided in this Agreement. If Subscriber fails to pay an invoice when due, Provider will issue a notice of late payment, and Subscriber will be charged a late fee of five percent (5%) of the outstanding past-due balance or the highest amount permitted by applicable law, if less.

7. **Taxes.** All Fees are exclusive of any Taxes. Subscriber will pay to Provider an amount equal to any Taxes arising from or relating to this Agreement which are paid by or are payable by Provider. "**Taxes**" means any form of taxation, levy, duty, customs fee, charge, contribution or impost of whatever nature and by whatever authority imposed (including without limitation any fine, penalty, surcharge or interest, excluding any taxes or franchise fees based solely on the net U.S. income of Provider. If Subscriber is a non-U.S. entity or engages in any use of the Services outside the U.S. and is required under any applicable law or regulation, domestic or foreign, to withhold or deduct any portion of the payments due Provider, then the sum payable to Provider will be increased by the amount necessary so that Provider receives an amount equal to the sum it would have received had Subscriber made no withholdings or deductions.

8. **Warranty.** Provider expressly warrants that it is the owner or licensee of Provider Applications, including any and all copyrights and trade secrets, and has the right and authority to enter into this Agreement and to license Provider Applications to Subscriber in accordance with the terms herein as of the Effective Date. For the period beginning on the original date of delivery of the Provider Applications and continuing for thirty (30) days thereafter, Provider expressly warrants that the Services produced using the Provider Applications will perform substantially in accordance with the written specifications contained in the documentation provided by Provider with the Services. EXCEPT AS PROVIDED IN THIS SECTION, ALL SOFTWARE AND SERVICES PROVIDED HEREUNDER IS PROVIDED "AS IS." THE FOREGOING WARRANTIES ARE EXCLUSIVE OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PROVIDER DOES NOT WARRANT THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS WILL BE CORRECTED.

9. **Liability.** IN NO EVENT SHALL PROVIDER BE LIABLE TO SUBSCRIBER OR ANY THIRD PARTY OR END USER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR CONTINGENT DAMAGES INCLUDING LOSS OF PROFITS, OR ANY AMOUNTS THAT IN THE AGGREGATE EXCEED THE FEES ACTUALLY

PAID TO PROVIDER BY SUBSCRIBER (THE FOREGOING BEING COLLECTIVELY CALLED "DAMAGES") INCURRED BY SUBSCRIBER OR ANY OTHER THIRD PARTY. SUCH LIMITATION OF LIABILITY SHALL APPLY WHETHER IN AN ACTION BASED ON CONTRACT, TORT OR ANY OTHER SUCH THEORY, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. **Indemnity.** Provider shall indemnify and hold harmless Subscriber and its officers, employees, agents and representatives and defend any action brought against same with respect to any third-party claim, demand or cause of action, including reasonable attorney's fees, to the extent that it is based upon a claim that the Provider Applications infringes or violates any United States patents, copyrights, trade secrets, or other proprietary rights of a third party. Subscriber may, at its own expense, assist in such defense if it so chooses, provided that Provider shall control such defense and all negotiations relating to the settlement of any such claim. Subscriber shall promptly provide Provider with written notice of any claim which Subscriber believes falls within the scope of this Section 9. In the event that the Provider Applications or any portion thereof is held to constitute an infringement and its use is enjoined, Provider may, at its sole option and expense, (a) modify the infringing Provider Applications so that it is non-infringing, (b) procure for Subscriber the right to continue to use the infringing Provider Applications, or (c) replace said Provider Applications with suitable, non-infringing software. Notwithstanding the foregoing, Provider will have no obligation for any claims to the extent such claims result from (i) modifications or alterations of the Provider Applications made by or for Subscriber or any other party that were not provided by Provider or authorized by Provider in writing; (ii) use outside the scope of the license granted hereunder, (iii) use of a superseded or previous version of the Provider Applications if infringement would have been avoided by the use of a newer version which Provider made available to Subscriber, or (iv) use of the Provider Applications in combination with any other software, hardware, data, or materials not supplied by Provider. This indemnity obligation is subject to the limitation of liability and the other pertinent terms and conditions of this Agreement.

11. **Publicity.** During the term of this Agreement, Subscriber and Provider may engage in co-marketing and publicity programs, including advertisements in trade and other publications, upon written approval (not to be unreasonably withheld or delayed). Provider may also use Subscriber's name and logo as a reference, on Provider's website, and in marketing materials. Subscriber agrees to serve as a "reference" for Provider which means that Subscriber may be called from time-to-time to serve as a reference to other prospective subscribers, current or potential investors, the press, and financial and technology analysts, as mutually agreed to by both parties. If requested by Provider, Subscriber further agrees to cooperate with Provider within one (1) year following the effective date of this Agreement to produce and publish a public or non-public (at Subscriber's discretion), "case study" of Subscriber's usage of Provider's products.

12. **U.S. Government Customers and End Users.** Any Provider Applications or related materials are "commercial items" as that term is defined in 48 C.F.R. 2.101 (October 1995) consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 (September 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1, 227.7202-3 and 227.7202-4 (June 1995), if the Customer hereunder is the U.S. Government or any agency or department thereof, any Provider Applications and related materials are licensed (i) only as a commercial item, and (ii) with only those rights as are granted to all other end users and customers pursuant to the terms and conditions of this Agreement.

13. **Force Majeure.** If by reason of Force Majeure including, without limitation, earthquakes, governmental regulation, fire, flood, labor difficulties, civil disorder and all acts of God, or any other act, event or circumstance beyond the reasonable control of a Party (whether or not mentioned or foreseeable), a Party is unable to perform in whole or in part its obligations as set forth in this Agreement, except for payment obligations, such Party shall not be liable to the other for its failure to perform said obligations.

14. **No Waiver.** Neither Party shall be deemed, by any act or omission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by an authorized officer of such Party. Such a waiver shall be limited specifically to the extent set forth in said writing. Waiver as to one event shall not be construed as waiver of any right or remedy as it relates to any subsequent event.

15. **Assignment.** Subscriber will not assign this Agreement or any right or obligation hereunder. Provider may assign this Agreement in the event of a merger or consolidation or the purchase of all or substantially all of its assets. Provider may subcontract any work related to the Services without consent from Subscriber, providing that Provider remains responsible for the performance of any subcontractor. This Agreement will be binding upon and inure to the benefit of the permitted successors and assigns of each party.

16. **Termination of Agreement.** Provider may terminate this Agreement and the licenses granted hereunder, upon written notice for any material breach of this Agreement that Subscriber fails to cure within thirty (30) days following written notice specifying such breach. Subscriber may terminate this Agreement and the licenses granted hereunder upon written notice for any material breach of this Agreement that Provider fails to cure within thirty (30) days following the written notice specifying such breach. In the event of termination of this Agreement for any cause, all rights granted hereunder automatically revert to the granting Party.

17. **Release.** Subscriber and its Users release and waive all claims against Provider, its parent, subsidiaries, affiliated companies, agents or content providers, and the directors, trustees, officers, shareholders, employees, agents and representatives of each of the foregoing (the "Provider Group"), from any and all claims, damages, liabilities, costs and expenses arising out of User's use of the Service and the Content. California residents waive any rights they may have under §1542 of the California Civil Code, which reads: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." Subscriber and its Users agree to release unknown claims and waive all available rights under California Civil Code §1542 or under any other statute or common law principle of similar effect. To the extent permitted by applicable law, this release covers all such claims regardless of the negligence of the Provider Group.

18. **Subscriber Representations.** Subscriber represents and warrants that (a) it has full power and authority to enter into the Subscription Agreement and to agree to all the terms and conditions contained therein and in these Terms of Service; (b) only Subscriber or its Users shall access the Subscription Services; (c) Subscriber and its Users will at all times use the Subscription Services only as expressly permitted by the Subscription Agreement, including these Terms of Service; (c) Subscriber will comply with all applicable laws, rules and regulations in connection with its access and use of the Subscription Services; (d) Subscriber is responsible for obtaining any permission or consent, and for establishing and enforcing necessary controls and restrictions, relating to the collection, storage and use of confidential or personally identified information that Subscriber may be obligated to protect under privacy, data protection, or similar requirements or policies; and (e) content, materials, and/or information contributed by Subscriber or Users will not contain any libelous, unlawful or infringing materials or content, will not infringe upon any party's proprietary rights and will not violate any law, regulation or right of any kind whatsoever or give rise to any actionable claim or liability. Subscriber agrees to accept responsibility and defend and protect Provider from any expense or liability arising from any violations of these warranties.

19. **Data Portability and Deletion.** It is the Subscriber's responsibility to download or export any desired data from the Application prior to termination of the Subscription Services. Procedures to export or download data are explained in the Application's help system. For a fee, EBS will create an export of Subscriber's data in a format determined by EBS as long as Subscriber requests such service in writing, within 90 days of termination of the Subscription Services. After that 90-day period, We will have no obligation to maintain or provide Your data, and will thereafter delete or destroy all copies of Your data in Our systems or otherwise in Our possession or control, unless legally prohibited.

20. **General.** These Terms constitute the exclusive terms and conditions with respect to the subject matter hereof. These Terms represent the final, complete and exclusive statement of the agreement between the parties with respect to subject matter hereof and all prior written agreements and all prior and contemporaneous oral agreements with respect to the subject matter hereof are merged therein. In the event of any conflict between these Terms and Subscriber's Subscription order or Software Agreement, the terms of the Subscription order or Software Agreement will control. The validity, interpretation and enforcement of this Agreement will be governed by and construed in accordance with the laws of the United States and of the State of Georgia without giving effect to the conflicts of laws provisions thereof. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Customer hereby irrevocably consents to jurisdiction of both the state or federal courts located in Georgia. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal or state laws or regulations are enacted, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted.

21. **Changes to Terms of Service.** PROVIDER RESERVES THE RIGHT TO CHANGE THESE TERMS OF SERVICE FROM TIME TO TIME. SUCH CHANGES WILL BECOME EFFECTIVE WHEN PROVIDER POSTS THE REVISED TERMS OF SERVICE AS PART OF THE SERVICE OR ON ANY RELATED WEBSITE. THE CURRENT VERSION OF THESE TERMS OF SERVICE CAN BE REVIEWED AT [HTTP://SIMBLI.EBOARDSOLUTIONS.COM/TERMSOFSERVICE.PDF](http://SIMBLI.EBOARDSOLUTIONS.COM/TERMSOFSERVICE.PDF). SUBSCRIBER AND USERS

SHOULD CHECK THE TERMS OF SERVICE FROM TIME TO TIME, AS THEY ARE BOUND BY THE TERMS OF SERVICE SO POSTED FROM AND AFTER THE TIME THE CHANGES ARE POSTED. ANY REVISED TERMS OF SERVICE SHALL SUPERSEDE ALL PREVIOUS VERSIONS.