

Terms of Service

Effective Date: **October 18, 2015**

Thanks for using Whitson Contracting & Management, Inc. d/b/a SWPPP Online (California Entity No. C2294929) ("**SWPPP Online**") products and services ("**Services**").

These Terms of Service ("**TOS**") contain the terms under which SWPPP Online and its affiliates provide their Services to you and describe how the Services may be accessed and used. Depending on which Services you use, additional terms and policies (including rules, guidelines and other similarly named documents) presented with those Services may apply ("**Additional Terms**"). Those Additional Terms become a part of your agreement with us if you use those Services. We refer to the combination of this TOS and any applicable Additional Terms collectively as these "**Terms**".

You indicate your agreement to these Terms by clicking or tapping on a button indicating your acceptance of these Terms, by executing a document that references them, or by using the Services. If you will be using the Services on behalf of an organization, you agree to these Terms on behalf of that organization and you represent that you have the authority to do so. In such case, "you" and "your" will refer to that organization.

1. Fees and Payments

1.1. Fees for Services. You agree to pay to SWPPP Online any fees for each Service you purchase or use (including any overage fees) in accordance with the pricing and payment terms presented to you for that Service. Where applicable, you will be billed using the billing method you select through your account management page. Fees paid by you are non-refundable, except as provided in these Terms or when required by law.

1.2. Subscriptions. Some of our Services are billed on a subscription basis (we call these "**Subscriptions**"). This means that you will be billed in advance on a recurring, periodic basis (each period is called a "**Billing Cycle**"), unless SWPPP Online notifies you otherwise in writing. Billing cycles are typically monthly or annual, depending on what subscription plan you select when purchasing a Subscription. Your Subscription will automatically renew at the end of each Billing Cycle unless you cancel auto-renewal through your online account management page, or by contacting our customer support team. While we will be sad to see you go, you may cancel auto-renewal on your Subscription at any time, in which case your Subscription will continue until the end of that Billing Cycle before terminating. You may cancel auto-renewal on your Subscription immediately after the Subscription starts if you do not want it to renew.

1.3. Payment. Payments will be billed to you in U.S. dollars, and your account will be debited when you subscribe and provide your payment information, unless stated otherwise in the program ordering or payment terms on the website for the Services. You must pay with one of the following: (a) a valid credit card acceptable to SWPPP Online; (b) a valid debit card acceptable to SWPPP Online; or (3) by another payment option SWPPP Online provides to you in writing. If your payment and registration information is not accurate, current, and complete and you do not notify us promptly when such information changes, we may suspend or terminate your account and refuse any use of the Services. SWPPP Online will automatically renew your monthly, quarterly, or annual Services at the then-current rates, unless the Services are cancelled or terminated under this

Agreement. Additional cancellation or renewal terms may be provided to you on the website for the Services.

1.4. Taxes. Unless otherwise stated, you are responsible for any taxes (other than SWPPP Online's income tax) or duties associated with the sale of the Services, including any related penalties or interest (collectively, "**Taxes**"). You will pay SWPPP Online for the Services without any reduction for Taxes. If SWPPP Online is obliged to collect or pay Taxes, the Taxes will be invoiced to you, unless you provide SWPPP Online with a valid tax exemption certificate authorized by the appropriate taxing authority or other documentation providing evidence that no tax should be charged. If you are required by law to withhold any Taxes from your payments to SWPPP Online, you must provide SWPPP Online with an official tax receipt or other appropriate documentation to support such payments.

1.5. Price Changes. SWPPP Online may change the fees charged for the Services at any time, provided that, for Services billed on a subscription basis, the change will become effective only at the end of the then-current Billing Cycle of your Subscription. SWPPP Online will provide you with reasonable prior written notice of any change in fees to give you an opportunity to cancel your Subscription before the change becomes effective.

1.6. Overage Fees. Unless otherwise stated, any overage fees incurred by you will be billed in arrears on a monthly basis. Overage fees which remain unpaid for 30 days after being billed are considered overdue. Failure to pay overage fees when due may result in the applicable Service being limited, suspended, or terminated (subject to applicable legal requirements), which may result in a loss of your data associated with that Service.

2. Privacy

2.1. Privacy. In the course of using the Services, you may submit content to SWPPP Online (including your personal data and the personal data of others) or third parties may submit content to you through the Services (your "**Content**"). We know that by giving us your Content, you are trusting us to treat it appropriately. SWPPP Online's [Privacy Policy](#), together with any Service-specific data use policies, privacy statements and privacy notices (collectively, "**Privacy Policies**"), detail how we treat your Content and personal data and we agree to adhere to those Privacy Policies. You in turn agree that SWPPP Online may use and share your Content in accordance with our Privacy Policies. You give SWPPP Online permission to combine non-identifiable information you enter or upload for the Services with that of other users of the Services and/or other SWPPP Online services. For example, this means that SWPPP Online may use your and other users' non-identifiable, aggregated data to improve the Services or to design promotions and provide ways for you to compare business practices with other users.

2.2. Confidentiality. SWPPP Online will treat your Content as confidential information and only use and disclose it in accordance with these Terms (including our Privacy Policies). However, your Content is not regarded as confidential information if such Content: (a) is or becomes public (other than through breach of these Terms by SWPPP Online); (b) was lawfully known to SWPPP Online before receiving it from you; (c) is received by SWPPP Online from a third party without knowledge of breach of any obligation owed to you; or (d) was independently developed by SWPPP Online without reference to your Content.

3. Your Content

3.1. You Retain Ownership of Your Content. You retain ownership of all of your intellectual property rights in your Content. SWPPP Online does not claim ownership over any of your Content. These Terms do not grant us any licenses or rights to your Content except for the limited rights needed for us to provide the Services, and as otherwise described in these Terms.

3.2. Limited License to Your Content. You grant SWPPP Online a worldwide, royalty free license to use, reproduce, distribute, modify, adapt, create derivative works, make publicly available, and otherwise exploit your Content, but only for the limited purposes of providing the Services to you and as otherwise permitted by SWPPP Online's Privacy Policies. This license for such limited purposes continues even after you stop using our Services, though you may have the ability to delete your Content in relation to certain Services such that SWPPP Online no longer has access to it. This license also extends to any trusted third parties we work with to the extent necessary to provide the Services to you. If you provide SWPPP Online with feedback about the Services, we may use your feedback without any obligation to you.

3.3. Prohibited Content. You agree not to use, nor permit any third party to use, the Services to upload, post, distribute, link to, publish, reproduce, engage in or transmit any of the following, including but not limited to: (a) Illegal, fraudulent, defamatory, obscene, pornographic, profane, threatening, abusive, hateful, harassing, offensive, inappropriate or objectionable information or communications of any kind, including without limitation conduct that would encourage "flaming" others, or criminal or civil liability under any local, state, federal or foreign law; (b) Content that would impersonate someone else or falsely represent your identity or qualifications, or that constitutes a breach of any individual's privacy; (c) Except as permitted by SWPPP Online in writing, investment opportunities, solicitations, chain letters, pyramid schemes, other unsolicited commercial communication or engage in spamming or flooding; (d) Virus, trojan horse, worm or other disruptive or harmful software or data; and (e) Any information, software or Content which is not legally yours and without permission from the copyright owner or intellectual property rights owner.

3.4. Copyright Claims (DMCA Notices). SWPPP Online Inc. responds to notices of alleged copyright infringement in accordance with the U.S. Digital Millennium Copyright Act (DMCA). If you believe that your work has been exploited in a way that constitutes copyright infringement, you may notify SWPPP Online's agent for claims of copyright infringement: _____ contact info _____.

3.5. Other IP Claims. SWPPP Online respects the intellectual property rights of others, and we expect our users to do the same. If you believe a SWPPP Online user is infringing upon your intellectual property rights, you may report it to SWPPP Online's agent. Claims of copyright infringement should follow the DMCA process outlined in these Terms, or any equivalent process available under local law.

4. SWPPP Online IP

4.1. SWPPP Online IP. Neither these Terms nor your use of the Services grants you ownership in the Services or the content you access through the Services (other than your Content). These Terms do not grant you any right to use SWPPP Online's trademarks or other brand elements. The Services are protected by copyright, trade secret, and other intellectual property laws. You are only granted the right to use the Services and only for the purposes described by SWPPP Online. SWPPP Online reserves all other rights in the Services.

5. User Content

5.1. User Content. You are responsible for your own Content and you must ensure that you have all the rights and permissions needed to use that Content in connection with the Services. SWPPP Online is not responsible for any actions you take with respect to your Content, including sharing it publicly. Please do not use content from the Services unless you have first obtained the permission of its owner, or are otherwise authorized by law to do so.

5.2. Content Review. You acknowledge that, in order to ensure compliance with legal obligations, SWPPP Online may be required to review certain content submitted to the Services to determine whether it is illegal or whether it violates these Terms (such as when unlawful content is reported to us). We may also modify, prevent access to, delete, or refuse to display content that we believe violates the law or these Terms. However, SWPPP Online otherwise has no obligation to monitor or review any content submitted to the Services.

5.3. Third Party Resources. SWPPP Online may publish links in its Services to internet websites maintained by third parties. SWPPP Online does not represent that it has reviewed such third party websites and is not responsible for them or any content appearing on them. Trademarks displayed in conjunction with the Services are the property of their respective owners.

6. Account Management

6.1. Keep Your Password Secure. If you have been issued an account by SWPPP Online in connection with your use of the Services, you are responsible for safeguarding your password and any other credentials used to access that account. You, and not SWPPP Online, are responsible for any activity occurring in your account (other than activity that SWPPP Online is directly responsible for which is not performed in accordance with the Customer's instructions), whether or not you authorized that activity. If you become aware of any unauthorized access to your account, you should notify SWPPP Online immediately. Accounts may not be shared and may only be used by one individual per account.

6.2. Keep Your Details Accurate. SWPPP Online occasionally sends notices to the email address registered with your account. You must keep your email address and, where applicable, your contact details and payment details associated with your account current and accurate. Accounts are controlled by the entity whose email address is registered with the account.

6.3. Remember to Backup. You are responsible for maintaining, protecting, and making backups of your Content. To the extent permitted by applicable law, SWPPP Online will not be liable for any failure to store, or for loss or corruption of, your Content.

6.4. Account Inactivity. SWPPP Online may terminate your account and delete any content contained in it if there is no account activity (such as a log in event or payment) for over 12 months. However, we will attempt to warn you by email before terminating your account to provide you with an opportunity to log in to your account so that it remains active.

7. User Requirements

7.1. Legal Status. If you are an individual, you may only use the Service if you have the power to form a contract with SWPPP Online. None of the Services are intended for use by individuals less than 18 years old. If you are under 18 years old or do not have the power to form a contract with SWPPP Online, you may not use the Services. If you are not an individual, you warrant that you are

validly formed and existing under the laws of your jurisdiction of formation and that you have duly authorized your agent to bind you to these Terms.

8. Acceptable Uses

8.1. Legal Compliance. You must use the Services in compliance with, and only as permitted by, applicable law.

8.2. Your Responsibilities. You are responsible for your conduct, Content, and communications with others while using the Services. You must comply with the following requirements when using the Services:

- a. You may not misuse our Services by interfering with their normal operation, or attempting to access them using a method other than through the interfaces and instructions that we provide.
- b. You may not circumvent or attempt to circumvent any limitations that SWPPP Online imposes on your account.
- c. Unless authorized by SWPPP Online in writing, you may not probe, scan, or test the vulnerability of any SWPPP Online system or network.
- d. Unless permitted by applicable law, you may not deny others access to, or reverse engineer, the Services, or attempt to do so.
- e. You may not transmit any viruses, malware, or other types of malicious software, or links to such software, through the Services.
- f. You may not engage in abusive or excessive usage of the Services, which is usage significantly in excess of average usage patterns that adversely affects the speed, responsiveness, stability, availability, or functionality of the Services for other users. SWPPP Online will endeavor to notify you of any abusive or excessive usage to provide you with an opportunity to reduce such usage to a level acceptable to SWPPP Online.
- g. You may not use the Services to infringe the intellectual property rights of others, or to commit an unlawful activity.
- h. Unless authorized by SWPPP Online in writing, you may not resell or lease the Services.
- i. If your use of the Services requires you to comply with industry-specific regulations applicable to such use, you will be solely responsible for such compliance, unless SWPPP Online has agreed with you otherwise. You may not use the Services in a way that would subject SWPPP Online to those industry-specific regulations without obtaining SWPPP Online's prior written agreement.

9. Suspension and Termination of Services

9.1. By You. If you terminate a Subscription in the middle of a Billing Cycle, you will not receive a refund for any period of time you did not use in that Billing Cycle unless you are terminating the Agreement for our breach and have so notified us in writing, or unless a refund is required by law.

9.2. By SWPPP Online. SWPPP Online may limit, suspend, or stop providing the Services to you if you fail to comply with these Terms (such as a failure to pay fees when due), or if you use the Services in a way that causes legal liability to us or disrupts others' use of the Services. SWPPP Online may also suspend providing the Services to you if we are investigating suspected misconduct by you. If we suspend or terminate the Services you receive, we will endeavor to give you advance notice and an opportunity to export a copy of your Content from that Service. However, there may be time sensitive situations where SWPPP Online may decide that we need to take immediate action

without notice. SWPPP Online has no obligation to retain your Content upon termination of the applicable Service.

9.3. Further Measures. If SWPPP Online stops providing the Services to you because you repeatedly or egregiously breach these Terms, SWPPP Online may take measures to prevent the further use of the Services by you, including blocking your IP address.

10. Changes and Updates

10.1. Changes to Terms. SWPPP Online may change these Terms at any time for a variety of reasons, such as to reflect changes in applicable law or updates to Services, and to account for new Services or functionality. Any changes will be posted to the location at which those terms appear. SWPPP Online may also provide notification of changes on its website or via email. Changes will be effective no sooner than the day they are publicly posted. In order for certain changes to become effective, applicable law may require SWPPP Online to obtain your consent to such changes, or to provide you with sufficient advance notice of them. If you do not want to agree to any changes made to the terms for a Service, you should stop using that Service, because by continuing to use the Services you indicate your agreement to be bound by the updated terms.

10.2. Changes to Services. SWPPP Online constantly changes and improves the Services. SWPPP Online may add, alter, or remove functionality from a Service at any time without prior notice. SWPPP Online may also limit, suspend, or discontinue a Service at its discretion. If SWPPP Online discontinues a Service, we will give you reasonable advance notice to provide you with an opportunity to export a copy of your Content from that Service. SWPPP Online may remove content from the Services at any time in our sole discretion, although we will endeavor to notify you before we do that if it materially impacts you and if practicable under the circumstances.

11. Disclaimers and Limitations of Liability

11.1. Disclaimers. While it is in SWPPP Online's interest to provide you with a great experience when using the Services, there are certain things we do not promise about them. We try to keep our online Services up, but they may be unavailable from time to time for various reasons. Unless specifically included with the Services, SWPPP Online is not in the business of providing legal, financial, accounting, tax, health care, real estate or other professional services or advice. Consult the services of a competent professional when you need this type of assistance. EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED "AS IS" AND SWPPP Online DOES NOT MAKE WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OR ANY REGARDING AVAILABILITY, RELIABILITY, OR ACCURACY OF THE SERVICES.

11.2. Exclusion of Certain Liability. TO THE EXTENT PERMITTED BY APPLICABLE LAW, SWPPP Online, ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, AND LICENSORS WILL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES WHATSOEVER, INCLUDING DAMAGES FOR LOST PROFITS, LOSS OF USE, LOSS OF DATA, ARISING OUT OF OR IN CONNECTION WITH THE SERVICES AND THESE TERMS, AND WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, EVEN IF SWPPP Online HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

11.3. Limitation of Liability. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE AGGREGATE LIABILITY OF EACH OF SWPPP Online, ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, AND LICENSORS ARISING OUT OF OR IN CONNECTION WITH THE SERVICES AND THESE TERMS WILL NOT EXCEED THE GREATER OF: (A) THE AMOUNTS PAID BY YOU TO SWPPP Online FOR USE OF THE SERVICES AT ISSUE DURING THE 3 MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY; AND (B) **US \$25.00.**

11.4. Consumers. We acknowledge that the laws of certain jurisdictions provide legal rights to consumers that may not be overridden by contract or waived by those consumers. If you are such a consumer, nothing in these Terms limits any of those consumer rights.

11.5. Businesses. If you are a business, you will indemnify and hold harmless SWPPP Online and its affiliates, officers, agents, and employees from all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim regarding or in connection with your use of the Services or a breach of these Terms, to the extent that such liabilities, damages and costs were caused by you.

12. Contracting Entity

12.1. Who you are contracting with. Unless otherwise specified in relation to a particular Service, the Services are provided by, and you are contracting with, Whitson Contracting & Management, Inc.

12.2. SWPPP Online Inc. For any Service provided by SWPPP Online, the following provisions will apply to any terms governing that Service:

- **Contracting Entity.** References to "**SWPPP Online**", "**we**", "**us**", and "**our**" are references to Whitson Contracting & Management, Inc., located at **11021 Via Frontera, Suite E, San Diego, CA 92127**, United States of America.
- **Governing Law.** Those terms are governed by the laws of the State of California (without regard to its conflict of laws provisions).
- **Jurisdiction.** Except if prohibited by applicable law, each party submits to the exclusive jurisdiction of the state courts located in San Diego, California, and the federal courts located in the Southern District of California with respect to the subject matter of those terms.

13. Arbitration

EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.

IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER OR ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.

DISCOVERY AND ANY RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.

Any claim or dispute, whether in contract, tort, statute or otherwise (including interpretation and scope of this Arbitration Clause, and the arbitrability of the claim or dispute), between you and SWPPP Online or SWPPP Online's employees, agents, successors or assigns, which arises out of or relates to your use or registration of SWPPP Online's website and/or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or SWPPP Online's election, be resolved by neutral, binding arbitration and not by a court action. If federal law provides that a claim or dispute is not subject to binding arbitration, this Arbitration Clause shall not apply to such claim or dispute. Any claim or dispute is to be arbitrated by a single arbitrator on an individual basis and not as a class action. **You expressly waive any right you may have to arbitrate a class action.** You may choose one of the following arbitration organizations and its applicable rules: the National Arbitration Forum, Box 50191, Minneapolis, MN 55405-0191 (www.arb-forum.com), the American Arbitration Association, 335 Madison Ave., Floor 10, New York, NY 10017-4605) (www.adr.org), or any other organization that you may choose subject to SWPPP Online's approval. You may get a copy of the rules of these organizations by contacting the arbitration organization or visiting its website.

Arbitrators shall be attorneys or retired judges and shall be selected pursuant to the applicable rules. The arbitrator shall apply governing substantive law in making an award. The arbitration hearing shall be conducted in the federal district in which you reside unless an independent contractor or other third party in association with SWPPP Online is a party to the claim or dispute, in which case the hearing will be held in the federal district where this contract was executed. SWPPP Online will advance your filing, administration services or case management fee and your arbitrator or hearing fee all up to a maximum of \$2,500, which may be reimbursed by decision of the arbitrator at the arbitrator's discretion. Each party shall be responsible for its own attorney, expert and other fees, unless awarded by the arbitrator under applicable law. If the chosen arbitration organization's rules conflict with this Arbitration Clause, then the provisions of this Arbitration Clause shall control. The arbitrator's award shall be final and binding on all parties, except that in the event the arbitrator's award for a party is \$0 or against a party is in excess of \$100,000, or includes an award of injunctive relief against a party, that party may request a new arbitration under the rules of the arbitration organization by a three-arbitrator panel. The appealing party requesting new arbitration shall be responsible for the filing fee and other arbitration costs subject to a final determination by the arbitrators of a fair apportionment of costs. Any arbitration under this Arbitration Clause shall be governed by the Federal Arbitration Act (9 U.S.C. Section 1 *et seq.*).

You and SWPPP Online retain any rights to self-help remedies. You and we retain the right to seek remedies in small claims court for disputes or claims within that court's jurisdiction, unless such action is transferred, removed or appealed to a different court. Neither you nor SWPPP Online waives the right to arbitrate by using self-help remedies or filing suit. Any court having jurisdiction may enter judgment on the arbitrator's award. This Arbitration Clause shall survive any termination, payoff or transfer of this contract. If any part of this Arbitration Clause, other than waivers of class action rights, is deemed or found to be unenforceable for any reason, the remainder shall remain enforceable. If a waiver of class action rights is deemed or found to be unenforceable for any reason in a case which class action allegations have been made, the remainder of this Arbitration clause shall be unenforceable.

SWPPP Online and SWPPP Online's employees, agents, successors or assigns hereby agree to the binding Arbitration Clause as set forth above.

14. Other Terms

14.1. Other Services. You may be offered other services, products, or promotions by SWPPP Online. Additional terms and conditions and fees may apply. With some Services you may upload or enter data from your account(s) such as names, addresses and phone numbers, purchases, etc., to the Internet. You grant SWPPP Online permission to use information about your business and experience to help us to provide the SWPPP Online Services to you and to enhance the Services. You grant SWPPP Online permission to combine your business data, if any, with that of others. You also grant SWPPP Online permission to share or publish summary results relating to research data and to distribute or license such data to third parties.

14.2. Assignment. You may not assign these Terms without SWPPP Online's prior written consent, which may be withheld in SWPPP Online's sole discretion. SWPPP Online may assign these Terms at any time without notice to you.

14.3. Entire Agreement. These Terms (including the Additional Terms) constitute the entire agreement between you and SWPPP Online, and they supersede any other prior or contemporaneous agreements, terms and conditions, written or oral concerning its subject matter. Any terms and conditions appearing on a purchase order or similar document issued by you do not apply to the Services, do not override or form a part of these Terms, and are void.

14.4. Independent Contractors. The relationship between you and SWPPP Online is that of independent contractors, and not legal partners, employees, or agents of each other.

14.5. Interpretation. The use of the terms "includes", "including", "such as", and similar terms, will be deemed not to limit what else might be included.

14.6. No Waiver. A party's failure or delay to enforce a provision under these Terms is not a waiver of its right to do so later.

14.7. Precedence. To the extent any conflict exists, the Additional Terms prevail over this TOS with respect to the Services to which the Additional Terms apply.

14.8. Severability. If any provision of these Terms is determined to be unenforceable by a court of competent jurisdiction, that provision will be severed and the remainder of terms will remain in full effect.

14.9. Third Party Beneficiaries. There are no third party beneficiaries to these Terms.