Perfect Source Terms and Conditions

Perfect Source Terms of Use Agreement

IN ORDER FOR YOU TO ACCESS, PARTICIPATE OR BENEFIT FROM THE SERVICES PROVIDED HEREUNDER, YOU MUST AGREE TO THESE PERFECT SOURCE TERMS OF USE. PLEASE READ THESE TERMS, OUR PRIVACY POLICY, AND OUR ANTITRUST POLICY CAREFULLY. BY CLICKING THE "I AGREE" BUTTON BELOW, YOU ARE INDICATING YOUR AGREEMENT TO BE BOUND BY, AND TO BIND YOUR COMPANY TO, ALL OF THE TERMS AND CONDITIONS OF THIS TERMS OF USE AGREEMENT AS OF TODAY'S DATE (THE "EFFECTIVE DATE").

By clicking "I accept," you ("you," in this entire Agreement, refers to you both (i) as an individual user and/or (ii) as an authorized representative of the company you represent ("Company")) agree that you are accessing Services provided by Perfect Commerce, LLC ("Perfect") on behalf of Company. You hereby represent that you have the authority to legally bind, and you are duly authorized to enter into this Agreement on behalf of Company. This website and the services provided by Perfect are intended for use only by you, your authorized users, and other participants authorized by Perfect. Your access to the website and services are conditioned upon acceptance of this Agreement. By clicking the "I ACCEPT" button below, you accept and agree to this Agreement, and Perfect's Privacy Policy and Perfect's Antitrust Policy (available at http://www.perfect.com/company/legal.php), as amended from time to time. You and Perfect may be referred to individually as "Party" and collectively as "Parties".

1. DEFINITIONS
1.1. “Authorized User” means a user who is authorized by Company to utilize the Services.
1.2. “Prospective Buyer” means an entity registered to use similar services provided by Perfect for purposes of running RFx events, and/or managing contracts, and/or using Supplier management tools.
1.3. “Services” means the services and Services Software accessed or used by Company pursuant to this Agreement, including, but not limited to, the computer software applications know as Perfect Source.
1.4. “Event Information” means all data and information submitted into the Software system by Prospective Buyers and Participants.
1.5. “Participants” means Company, Authorized Users, and Prospective Buyers.
1.6. “Services Software” means (i) any computer software program utilized by Perfect in the establishment, operation, and/or provision of Services including any proprietary schema, data processing or storing applications, tools, methodologies, databases and (ii) all source code, documentation, updates, upgrades, and derivative works thereof.
1.7. “Supplier” means any entity, which may include Company, which: (i) offers and/or sells goods or services to buyers or Prospective Buyers; or (ii) provides its catalog content to Perfect for the production of electronic catalogs.
2. SERVICES.

2.1. Right of Access; Scope of Use. Perfect hereby grants Company a non-exclusive, non-transferable, non-assignable, limited right to access and utilize the Services and the Services Software to participate in RFx events, which are initiated by prospective buyers, subject to the following restrictions: (i) Company may use the Services and the Services Software solely for Company’s own internal business purposes; and (ii) Company shall not (A) make any copies of all or any portion of the Services Software or the Services, (B) sell, sublicense, distribute, rent, lease or assign the Services or the Services Software to any other person or entity, (C) modify, reverse engineer, decompile, disassemble, translate, alter or create derivative works based on the Services or the Services Software, or (D) permit any other person, any other entity or any third party to use the Services or the Services Software. Company understands, acknowledges and agrees that: (i) Perfect will use commercially reasonable efforts to make the Services available 24 hours per day, 7 days a week, however the availability of the Services and the Services Software depends on many factors, including Company’s connection to the Internet, the availability of the Internet and the Internet backbone, scheduled maintenance, and equipment that, by its nature, is not fault tolerant; (ii) Perfect undertakes no duties to deliver, distribute or ship the products or services of a Supplier; (iii) under no circumstances shall Perfect take title to, or in any manner obtain an interest in, or otherwise be deemed to be within the chain of title of, any products or services of a Supplier; and (iv) Perfect from time to time may modify the Services or the Services Software in its sole discretion.

2.2. Means of Access. Perfect shall provide Company unique login credentials and Passcode(s) to access the Services. Company is responsible for maintaining the confidentiality of the Passcode(s) and will be solely liable for all activities that occur under Company’s login identification credentials. Company shall immediately notify Perfect of any unauthorized use of any credentials and shall immediately change any affected Passcode(s). Company agrees to access the Services in a secure manner in compliance with Perfect’s reasonable standards established from time to time which currently require Company’s use of web browsers utilizing 128 bit SSL encryption. Perfect, in its sole discretion, may specify connectivity standards to access the Services when applicable. The credentials of Companies not meeting these standards may be terminated or suspended at any time.

3. PROPRIETARY RIGHTS

3.1. Title to Technology. All interest, title and right (including, without limitation, patent rights, copyrights, trade secrets, trade names, service marks, trademarks, moral rights, know-how (collectively “Intellectual Property Rights”)) pertaining to Perfect or the Services, in whole or in part, shall be, vest with, and remain the exclusive property of Perfect and its third party licensors.

3.2. Title to Event Information. All Event Information is and shall remain the property of its lawful owner. Perfect makes no claims, warranties or representations with regard to the ownership of Event Information. Further, Perfect agrees to not share Event Information, whether singular or in aggregate, with any individual or entity not a party to the transaction in question. Except as otherwise provided herein, Perfect shall hold Event Information of Participants in confidence, and protect the confidentiality of and take all
reasonable steps to prevent unauthorized use of Event Information. Notwithstanding the foregoing, Perfect may identify a party to an RFx event as being involved in the event to any party. Perfect may share all Event Information, in the singular or aggregate, by providing reports or otherwise, to the Prospective Buyer Participants involved in the event, and any individual or entity party to the transaction in question.

3.3. Company License of Content. Company hereby grants to Perfect a royalty free, nonexclusive, non-transferable worldwide license to use, reproduce, distribute, display and transmit Company’s content (including any Company trademarks, trade names, and service marks (“Company Marks”)) solely for the purposes of: (i) identifying Company as the entity participating in the event; (ii) for permitting or facilitating communication between Company and the Potential Buyers and selected by Company as recipients during the event (iii) publicly identifying Company as a user of Services. Perfect agrees that nothing in this Agreement gives Perfect any right, title or interest of any kind in the Company’s Marks other than the right to use the Company Marks as provided herein. Any and all use of Company Marks by Perfect will meet Company’s trademark guidelines if provided to Perfect. Company also grants Perfect the right to modify the format, structure, and organization of the Event Information and Company content solely for the purposes of (i) and (ii) above. Prospective Buyers and/or Perfect may print all or any portion of any content or Event Information.

4. TERM AND TERMINATION
4.1. Effective Date. Unless earlier terminated in accordance herewith, this Agreement shall commence upon initial login or acceptance and shall continue until terminated by Perfect (“Term”).
4.2. Termination for Convenience. Either Party may terminate this Agreement for any reason or no reason by providing the other Party no less than thirty (30) days advance written notice thereof. Perfect may terminate this Agreement for any reason or no reason at any time.
4.3. Effect of Termination. Upon termination of this Agreement, Company shall immediately discontinue use of the Services and the Services Software.
4.4. Survival. Notwithstanding any termination of this Agreement, Section 3 (“Proprietary Rights”), Section 5 (“Warranties”), Section 6 (“Indemnification”), Section 7 (“Disclaimer and Limitation of Liability”) and Section 8 (“Additional Terms and Conditions”) shall survive termination of this Agreement. All other rights and licenses granted hereunder will cease upon termination.

5. WARRANTIES. Each Party warrants that it has the authority to enter into this Agreement. You warrant that (i) you have the authority to act on behalf of Company and to bind Company herein, and (ii) you are at least 18 years old. Company warrants that (i) its Authorized Users have authority to act on behalf of Company; and (ii) all Event Information, Content or other materials submitted by Company to Perfect hereunder will not (A) infringe on any third party’s rights, including any Intellectual Property Rights, (B) violate any applicable law, statute, ordinance or regulation; or (C) contain viruses, Trojan horses, worms, time bombs, cancel bots or other similar harmful or deleterious
6. INDEMNIFICATION. You shall indemnify, defend and hold harmless Perfect and its directors, officers, members, managers and employees from and against all claims, actions, liabilities, losses, expenses, damages and costs (including reasonable attorneys’ fees), that may at any time be incurred by reason of any third party claim arising out of or relating to a breach of this Agreement by you, or any claim that is inconsistent with your representations or warranties to Perfect contained in this Agreement. You shall also indemnify, defend and hold harmless Perfect and its directors, officers, members, managers and employees from any claim based upon alleged errors, omissions or misrepresentations in any content or communications delivered to Perfect by you or claims related directly or indirectly to Company’s sale of goods or services, including, without limitation, the quality or shipment of, or payment for, goods or services.

7. DISCLAIMER AND LIMITATION OF LIABILITY.
(A) PERFECT DOES NOT CONTROL OR REVIEW (i) ANY EVENT INFORMATION FOR ACCURACY, ERRORS OR DUPLICATION, (ii) THE QUALITY OR AVAILABILITY OF GOODS OR SERVICES, OR (iii) THE TERMS AND CONDITIONS ON WHICH GOODS OR SERVICES ARE OFFERED, PURCHASED, OR DELIVERED.
(B) PERFECT IS NOT A PARTY TO, THIRD PARTY BENEFICIARY OF, OR A GUARANTOR OF PERFORMANCE UNDER ANY AGREEMENT BETWEEN COMPANY AND ANY BUYER, POTENTIAL BUYER, OR OTHER THIRD PARTY.
(C) COMPANY EXPRESSLY RELEASES PERFECT OF ANY LIABILITY RELATED TO A BUYER'S, A POTENTIAL BUYER'S, OR OTHER THIRD PARTY’S ELECTION TO DISCONTINUE INTERACTIONS WITH COMPANY.
(D) PERFECT MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY TYPE WITH RESPECT TO THE SERVICES OR THE SERVICES SOFTWARE, OR THE QUALITY OF ANY GOODS OR SERVICE OFFERINGS OF ANY SITE, PERSON, OR BUSINESS TO WHICH THE SERVICES OR THE SERVICES SOFTWARE MAY BE LINKED, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE.
(E) PERFECT MAKES NO WARRANTY TO YOU WITH RESPECT TO ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT.
(F) PERFECT MAKES NO REPRESENTATIONS ON BEHALF OF PROSPECTIVE BUYERS OR PARTICIPANTS AND IS NOT RESPONSIBLE FOR ANY REPRESENTATIONS MADE BY PROSPECTIVE BUYERS OR PARTICIPANTS. RELIANCE UPON ANY COMMUNICATIONS THAT PURPORT TO MAKE ANY SUCH REPRESENTATIONS IS DONE AT YOUR OWN RISK AND SHALL NOT RESULT IN ANY LIABILITY TO PERFCT.
(G) YOU USE THE SERVICES AND THE SERVICES SOFTWARE AT YOUR OWN RISK AND NO PARTY’S LIABILITY (TOGETHER WITH THAT OF ITS AGENTS, MANAGERS, OFFICERS, DIRECTORS, REPRESENTATIVES, MEMBERS AND
EMPLOYEES) TO THE OTHER PARTY FOR DAMAGES WITH RESPECT TO THIS AGREEMENT, THE SERVICES SOFTWARE, OR THE SERVICES SHALL EXCEED THE FEES ACTUALLY PAID BY COMPANY TO PERFECT DURING THE TWELVE (12) MONTHS PRIOR TO THE OCCURRENCE OF THE BREACH OR DAMAGE $100,000.

(H) NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AND IRRESPECTIVE OF ANY FAULT OR NEGLIGENCE, NO PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SALES, LOST SAVINGS, LOST PROFITS (ANTICIPATED OR ACTUAL), LOSS OF USE, DOWNTIME, INJURY TO PERSONS OR DAMAGE TO PROPERTY AND CLAIMS OF THIRD PARTIES), HOWSOEVER CAUSED, ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN APPRISED OR NOTIFIED THAT ANY SUCH DAMAGES OR LOSSES ARE POSSIBLE OR LIKELY, AND WHETHER OR NOT ANY PERMITTED REMEDY HAS FAILED ITS ESSENTIAL PURPOSE.

(I) THE PARTIES AGREE THAT THE LIMITATIONS IN CLAUSES (D), (E), (F), (G) AND (H) OF THIS SECTION 8 SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY OR TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OF ANY KIND, WHETHER ACTIVE OR PASSIVE) OR ANY OTHER LEGAL OR EQUITABLE THEORY, BUT SHALL NOT APPLY TO FEES OWED TO PERFECT.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THIS AGREEMENT SHALL NOT APPLY LIMITATIONS OF LIABILITY BETWEEN COMPANY AND POTENTIAL BUYERS SELECTED BY COMPANY FOR RECEIPT OF COMPANY’S COMMUNICATIONS.

8. ADDITIONAL TERMS AND CONDITIONS.

8.1. Notices. Any notice required or permitted under the terms of this Agreement shall be delivered in person, by FAX, overnight courier service, or mailed by first class, registered, or certified mail, postage prepaid, to Attention: Perfect Commerce Legal Department, One Compass Way, Suite 120, Newport News, VA 23606, if to Perfect; and if to the Company, Attention to the name of the individual provided with login credentials, at the address of the principal place of business of Company. All such notices shall be deemed to have been given upon receipt.

8.2. U.S. Government Licenses. The Services and the Services Software were developed at private expense and are deemed to be "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. All U.S. Government Authorized Users acquire access to the Services and Services Software subject to the restrictions set forth in this Agreement and as provided in 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4.

8.3. Export Restrictions. Parties represent and covenant that they shall, at all times, comply with restrictions set forth as provided in 10 C.F.R. 810. Company represents and covenants that it will not use the Services Software or Services in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or
8.4. Antitrust Policy. Company agrees to comply with all applicable antitrust and competition laws and Perfect's Antitrust Policy, which is incorporated by reference into this Agreement.

8.5. Miscellaneous. Perfect reserves the right, in its sole discretion, to subcontract any or all of the Services herein. Neither this Agreement nor any rights under this Agreement may be transferred or assigned by Company without the prior written consent of Perfect. Notwithstanding any translations, it is the express wish of the Parties to be bound by the official version of this Agreement, which is in the English language. Reliance upon any language translations of this Agreement is done at your own risk. This Agreement shall be governed solely in accordance with the laws of the Commonwealth of Virginia, excluding its conflict of law principles and the UN Convention for the International Sales of Goods. You expressly agree to the exclusive jurisdiction of the courts of the Commonwealth of Virginia. In any action or proceeding to enforce rights under this Agreement, the prevailing Party will be entitled to recover costs and reasonable attorney’s fees from the other Party. In the event that any provision of this Agreement is held invalid, the remaining terms and conditions of this Agreement shall remain in full force and effect. The failure of Perfect to enforce any of the provisions of this Agreement shall not be deemed to be a waiver of the right of Perfect thereafter to enforce any such provisions. Nonperformance of either Party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, blackouts, governmental acts or orders or restrictions, failure of suppliers or the Internet, or acts of God or terrorism, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing Party. You shall not disclose the pricing, fees, terms, conditions or other content of this Agreement, or the functional details of the Services provided hereunder, to any third party other than a respective Party's officers, directors, members, managers, affiliates, employees, accountants, attorneys, investment bankers, independent contractors, agents or other representatives or persons that may from time-to-time be employed, retained by, working for, or acting on behalf of such Party. Failure to maintain such non-disclosure shall entitle Perfect to seek immediate injunctive relief from any court, wherever located, to prevent further disclosures. Nothing contained in this Agreement will be construed to constitute the Parties as partners, joint venturers, co owners or otherwise as participants in a joint or common undertaking. This is an integrated Agreement and all exhibits, Supplements or attachments hereto and incorporated herein constitute the entire, final, complete and exclusive agreement between the Parties regarding the subject matter hereof and supersedes all previous agreements, intentions, or representations, oral or written, relating to the subject matter of this Agreement. Any representation or warranty not expressly contained in this Agreement will not be enforceable.

THIS TERMS OF USE AGREEMENT IS A LEGAL CONTRACT THAT WILL BIND PERFECT, YOU AND YOUR COMPANY WHEN YOU CLICK THE "I AGREE" BUTTON BELOW. CLICKING "I AGREE" WILL HAVE THE EFFECT OF A SIGNATURE. YOU HEREBY AFFIRM THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO ALL OF THE TERMS AND CONDITIONS SET FORTH HEREIN.
IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS ON BEHALF OF THE COMPANY THAT YOU REPRESENT, OR IF YOU DO NOT HAVE THE AUTHORITY TO DO SO, SELECT "I DO NOT AGREE."