



PERFECT COMMERCE MASTER SERVICES AGREEMENT

COMPANY INFORMATION

EFFECTIVE DATE: December 15, 2005

Name: School District of Palm Beach County, Florida
Address:
City:
Contact Name:

State:
Title:
Zip:

State of Organization:

AGREEMENT: This Perfect Commerce Master Services Agreement is made and entered into as of the Effective Date set forth above by and between Perfect Commerce, Inc., a Delaware corporation ("Perfect"), and the company identified above ("Company").

ATTACHMENTS:

- 1. Services and Fee Schedule
2. Service Level Agreement

SIGNATURES:

By signing this Agreement, the undersigned certify that they have read and understand, and agree to be legally bound by, this Agreement.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

COMPANY

Perfect Commerce, Inc.

By: Thomas E. Lynch
Name: Board Chairman
Title:

By: [Signature]
Name: [Signature]
Title: [Signature]

Approved As To Form And Legal Sufficiency [Signature] 12/7/05

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS. The following are definitions applying to this Agreement. Additional definitions applying solely to a particular Attachment to this Agreement will be set forth in that Attachment.

1.1 "Additional Services" means those services described in one or more Statement(s) of Work executed between the Parties.

1.2 "Affiliate" means with respect to a Party, any corporation or other entity that controls, is controlled by, or is under common control with, a Party.

1.3 "Authorized User" means a user who is authorized by Company to utilize the Services on its behalf.

1.4 "Commencement Date" means the day the Service is available for production use by Company.

1.5 "Confidential Information" means:

- (i) With regard to Perfect, all Perfect Information, Software, inventions, know-how, ideas, programs, apparatus programs, and Intellectual Property Rights related to, connected with or arising out of the Services;
(ii) With regard to Company, Company Information, and any non-public information regarding the business or business partners of Company, in whole and in part; and
(iii) With regard to either Party, the terms, conditions, pricing and other contents of this Agreement, any other information, technical data, or know-how, including, but not limited to, that which relates to research, product plans, products, services, customers, markets, software, software code, software documentation, developments, inventions, lists, trade secrets, data compilations, processes, designs, drawings, engineering, hardware configuration information, marketing or finances.

Notwithstanding the foregoing, Confidential Information does not include information, data or know-how which:

- (i) Is in the public domain at the time of the disclosure or becomes available to the public thereafter without restriction, and not as a result of the act or omission of the receiving Party;
(ii) Is rightfully obtained by the receiving Party from a third

party without restriction as to disclosure;

(iii) Is lawfully in the possession of the receiving Party at the time of the disclosure;

(iv) Is approved for release by written authorization of the disclosing Party;

(v) Is developed independently and separately by the receiving Party without use of the disclosing Party's Confidential Information; or

(vi) Is required to be disclosed by the receiving Party pursuant to law or legally enforceable order of court or judicial body;

(vii) Is contained in a Transaction Document; or

(viii) Is exchanged between Company and Supplier via the Services.

1.6 "Content" means any data, information or materials provided to Perfect by a Supplier including, parametric information regarding Products such as item descriptions, product and service attributes, units of measures, categories, price, payment methods, photographs, drawings, audio, video, technical specifications, and any associated marketing literature or point of purchase information, including any updates, revisions, and corrections thereto. Content does not include Transaction Documents or any portion of the Software.

1.7 "Fees" means all fees payable by Company to Perfect pursuant to this Agreement.

1.8 "Force Majeure" means events or conditions beyond a Party's reasonable control, including, without limitation, acts of common enemy, earthquakes, floods, fires, epidemics, terrorist attacks, embargoes, strike, fire, governmental acts or orders or restrictions, acts of God, lack of internet availability, inability to secure products or services from third parties, or any other reason where failure to perform is not caused by the negligence of the nonperforming Party.

1.9 "Information" means any technical, or business information in written, graphical, oral, or other tangible or intangible forms, including but not limited to specifications, drawings, tools, samples, reports, compilations, records, data, computer programs, drawings, models, and secrets.

1.10 **"Intellectual Property Rights"** means any patent rights, copyrights, trade secrets, trade names, service marks, trademarks, moral rights, know-how and any other similar rights or intangible assets recognized under any laws or international conventions, and in any country or jurisdiction in the world, as intellectual creations to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations or reissues of the foregoing now or hereafter in force.

1.11 **"Party" or "Parties"** means either individually or collectively, as the case may be, Perfect and Company and any and all permitted successors and assigns.

1.12 **"Products"** means the goods and/or services that may be ordered from Suppliers by Company through its use of the Services.

1.13 **"Services"** means the services provided by Perfect and Affiliates to Company pursuant to this Agreement and as described in the Attachment(s) attached hereto, including any successor or replacement services offering the same or more functionality than its predecessor.

1.14 **"Software"** means the proprietary computer software programs utilized or provided by Perfect in the delivery of Services.

1.15 **"Statement of Work"** means the detailed description of Additional Services to be provided by Perfect to Company as may be executed from time to time between the Parties, in a form to be mutually agreed upon.

1.16 **"Supplier"** means a person or entity who has agreed to use one or more Services offered by Perfect for the offering and sale of Products to Company.

1.17 **"Transaction Documents"** means any electronic business documents transmitted through the use of the Services.

## 2. SERVICES ACCESS

2.1 **Use.** Subject to payment of the applicable Fees and Company's compliance with the terms of this Agreement, Perfect hereby grants Company a non-exclusive, non-transferable, limited right to access and utilize the Services and the Software to manage the purchase and sale of Products, subject to the following restrictions: (i) Company may use the Services and the 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 Software or the Services, (B) sell, sublicense, distribute, rent, lease or assign the Services or the 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 Software, or (D) permit any Affiliate or other third party to use the Services or the Software.

2.2 **User IDs and Passwords.** Perfect shall provide to Company user IDs and passcodes or other secured means to access the Services, as applicable. Company may request additional user IDs and passcodes, subject to the payment of the applicable additional fees. Company is responsible for maintaining the confidentiality of its user IDs and passcodes and will be solely liable for all activities that occur under Company's user IDs. Company shall immediately notify Perfect of any unauthorized use of Company's user IDs and change any affected passcodes. 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, to the extent applicable, Company's use of web browsers utilizing 128 bit SSL encryption.

## 3. SCOPE, AVAILABILITY AND MODIFICATIONS

3.1 **Scope of Services.** The Services are intended to enable transactions between Company and Suppliers. Perfect is not a party to, third party beneficiary of, or a guarantor of performance with respect to any subsequent agreement between Company and any third party. Specifically, (i) Perfect does not control the quality, safety, legality or availability of Products accessed through the Services, the terms and conditions on which those Products are offered or purchased, or the third party's compliance with an agreement that it may execute with Company; (ii) Perfect undertakes no duties to distribute or ship the Products of a Supplier; and (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 of a Supplier.

Company acknowledges that Perfect takes no responsibility for the terms and conditions governing the purchase, sale and delivery of Products. Perfect shall provide such Additional Services as may be agreed to between the Parties and set forth in a properly executed Statement of Work.

3.2 **Availability of Services.** Notwithstanding anything to the contrary stated herein, Company acknowledges and agrees that the availability of the Services is subject to the availability of connection services to and within the Internet and to other network functions within and around the Internet and that the Internet, by its nature, is not fault-tolerant and Perfect shall not have any liability for any breach of any representation, warranty or covenant of this Agreement that arises out of or relates to the unavailability of such connection services and other network functions.

3.3 **Modification of Services.** Company understands and agrees that Perfect may modify the Services, their names, or the manner in which the Services are made available, and that those modifications may create differences in how Company accesses the Services. Company further understands and agrees that, upon reasonable advance written notice to Company, Perfect reserves the right to replace any of the Services with services offering the same or more functionality than its predecessor.

## 4. PAYMENT

4.1 **Payment Terms.** During the term of this Agreement, Company agrees to compensate Perfect for Services as set forth in the Fee Schedule attached hereto or any Statement of Work. Unless otherwise noted in the Fee Schedule or any Statement of Work, Perfect shall send invoices to Company and all amounts due Perfect shall be paid within thirty (30) days of the invoice date.

4.2 **Taxes.** Company shall calculate and pay all taxes, duties or charges of any kind (including withholding or value added taxes) imposed by any federal, state, or local governmental entity for the Services provided under this Agreement, excluding only taxes based solely on Perfect's net income. Company shall hold Perfect harmless from all claims and liability arising from Company's failure to support or pay any such taxes, including duties, tariffs or charges.

## 5. PROPRIETARY RIGHTS

5.1 **Title to Technology.** All Intellectual Property Rights pertaining to Perfect, the Software and the Services, in whole or in part, shall be, vest with and remain the exclusive property of Perfect and its third party licensors.

5.2 **Title to Content.** All title, right, and interest in and to Content submitted to Perfect in the course of performing the Services shall remain the property of the applicable Supplier or other third party owners. All title, right and interest in and to Content licensed by Perfect from third party licensors and utilized in the process of providing the Services, if any, shall remain the exclusive property of Perfect or its third party licensors. If all or part of any Content becomes the subject of an actual or threatened lawsuit or if Perfect believes such Content may violate a third party's Intellectual Property Rights or applicable law, Perfect will immediately be entitled to remove such Content without incurring any liability to Company.

## 6. CONFIDENTIALITY

6.1 **Nondisclosure of Confidential Information.** Subject to Chapter 119 of the Florida State Statutes, each Party shall retain the other Party's Confidential Information in the strictest confidence (need to know basis) and shall not disclose such Confidential Information to any third party. Each Party agrees: (i) to use the Confidential Information only for the purposes of this Agreement and as expressly permitted by this Agreement; (ii) not to make copies of or store Confidential Information or any part thereof except as expressly permitted by this Agreement; (iii) to reproduce and maintain on any copies of any Confidential Information such proprietary legends or notices (whether of disclosing Party or a third party) as are contained in or on the original or as the disclosing Party may otherwise reasonably request; and (iv) to treat this Agreement as Confidential Information.

6.2 **Remedies.** The Parties agree that, notwithstanding any other section of this Agreement, the non-breaching Party shall be entitled to seek equitable relief to protect its interests, including but not limited to preliminary and permanent injunctive relief, as well as

money damages. Nothing stated herein shall be construed to limit any other remedies available to the Parties.

## 7. TERM AND TERMINATION

7.1 Term. This Agreement shall become effective on the Effective Date and shall continue in force through June 30, 2011.

7.2 Termination for Cause. Perfect may, by written notice to Company, terminate this Agreement if any of the events described under (i), (ii) or (iii) below occurs, and Company may, by written notice to Perfect, terminate this Agreement if either of the events described under (ii) or (iii) below occurs (in each case, "Cause"). In the event Company terminates this Agreement for Cause, Perfect will refund the pro-rated portion of any pre-paid Fees covering the period of time during which Services were to be provided by Perfect. In the event Perfect terminates this Agreement for Cause, the Company will forfeit any pre-paid Fees paid to Perfect.

(i) Company fails to pay any amount due to Perfect within ten (10) days after Perfect gives Company written notice of such non-payment;

(ii) The other Party is in breach of any material, non-monetary term, condition or provision of this Agreement, which breach, if capable of being cured, is not cured within thirty (30) days after the non-breaching Party gives the breaching Party written notice of such breach; or

(iii) The other Party (a) terminates or suspends its business activities, (b) becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority, or (c) becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes which is not rescinded within sixty (60) days.

~~7.3 Acceleration of Payments. In the event Company is in default in making any payment to Perfect when due, Perfect may suspend Company's access to, and Perfect's performance of, the Services until Company has cured such default and made the required payments, and arrangements have been made reasonably satisfactory to Perfect that ensure the payment of future invoices.~~

7.4 Return Of Materials. Upon termination of this Agreement consistent with the terms herein, Perfect may immediately discontinue Company's access and use of the Services. Company shall promptly discontinue use of any Services, Software and Confidential Information that Company has received from Perfect.

7.5 Effect of Termination. Notwithstanding any termination of this Agreement, Section 6 ("Confidentiality") shall survive for a period of five (5) years, Section 10.3 ("Employee Solicitation") shall survive for a period of one (1) year, while Sections 5 ("Proprietary Rights"), 7.3 ("Acceleration of Payments"), 8 ("Disclaimer; Limitation of Liability"), 9 ("Indemnification") and 10.5 ("Arbitration and Governing Law") shall survive termination of this Agreement indefinitely. All other rights granted hereunder will cease upon termination.

7.6 Termination for Convenience. Notwithstanding anything in the Agreement to the contrary, Company may terminate this Agreement without cause upon ninety (90) days written notice to Perfect. If the Agreement is terminated pursuant to this Section 7.6, Perfect shall be entitled to receive payment for all Services and Additional Services performed and expenses incurred through the effective termination date.

## 8. DISCLAIMER; LIMITATION OF LIABILITY

8.1 Disclaimer. TO THE MAXIMUM EXTENT ALLOWED BY LAW AND EXCEPT AS UNAMBIGUOUSLY AND EXPRESSLY SET FORTH IN ANY EXHIBIT, SCHEDULE OR ATTACHMENT, THE SERVICES ARE PROVIDED "AS IS" AND PERFECT SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES CONNECTED WITH, RELATED TO OR ARISING OUT OF THIS AGREEMENT. PERFECT EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT ACCESS OR USE OF THE SERVICES WILL BE ERROR-FREE, SECURE OR UNINTERRUPTED, OR

THAT INFORMATION OR CONTENT WILL BE ACCURATE OR TIMELY.

8.2 Limitation of Liability. TO THE MAXIMUM EXTENT ALLOWED BY LAW, IN NO EVENT WILL PERFECT BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGIES OR SERVICES, COST OF COVER OR PUNITIVE OR EXEMPLARY, OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE SERVICES PERFORMED HEREUNDER, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, PERFECT WILL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY DELAY IN DELIVERY OR FURNISHING THE SERVICES. PERFECT'S LIABILITY UNDER THIS AGREEMENT OR THE TERMINATION OF THIS AGREEMENT WHETHER FOR DIRECT, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL AND/OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, RESTITUTION, WILL NOT, IN ANY EVENT, EXCEED THE FEES ACTUALLY PAID BY COMPANY TO PERFECT PURSUANT TO THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRIOR TO THE OCCURRENCE OF THE BREACH OR DAMAGE.

## 9. INDEMNIFICATION

9.1 By Perfect. Perfect agrees to defend or, at its option, to settle, any claim brought against Company for infringement of any United States copyright, trade secret or trademark by the Services as delivered, and to indemnify Company against all damages and costs assessed against Company under any such claim or action. Company agrees that Perfect shall be released from the foregoing obligation unless Company has taken all reasonable steps to mitigate any potential expenses and provides Perfect with: (i) prompt written notice of any such claim or action, or possibility thereof; (ii) sole control and authority over the defense or settlement of such claim or action; and (iii) proper and full information and assistance to settle and/or defend any such claim or action. Company shall have the right to employ separate counsel and participate in the defense at its own expense; provided that Perfect shall remain in control of the defense. In addition, Perfect may, at its sole option and expense, either: (a) procure for Company the right to use the infringing Services; (b) replace the infringing Services with non-infringing, functionally equivalent services; (c) modify the infringing Services so that they are not infringing; or if (a), (b), and (c) are not commercially feasible, then (d) will cease to provide the infringing Services, pay as liquidated damages an amount equal to any Fees covering any period of time during which such infringing Services were to be provided and terminate this Agreement as it relates to such infringing Services. Upon exercise of option (d) in the previous sentence, Perfect shall have no further obligations or liability to Company with respect to the infringing Services. Except as specified above, Perfect will not be liable for any costs or expenses incurred without its prior written authorization. The foregoing obligations do not apply with respect to Services or Software or portions or components thereof (i) not supplied by Perfect, (ii) made in whole or in part in accordance to Company specifications, (iii) that are modified after delivery by Perfect, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Company continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Company's use of such Services or Software is not strictly in accordance with this Agreement. Subject to the limitations in Florida Statute Section 768.28, Company will indemnify Perfect from all damages, settlements, attorneys' fees and expenses related to any claim of infringement or misappropriation excluded from Perfect's indemnity obligation by the preceding sentence.

9.2 By Company. Company shall indemnify and hold harmless Perfect and its Affiliates, and their directors, shareholders, members, agents and employees from and against

any fine, penalty, costs, losses, liabilities and expenses (including reasonable attorneys fees) arising out of or relating to the Company's use of the Services under this Agreement.

**9.3 Exclusive Remedy.** THE FOREGOING PROVISIONS OF THIS SECTION 9 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF PERFECT AND ANY OF ITS LICENSORS, AND THE EXCLUSIVE REMEDY OF COMPANY, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT BY THE SERVICES, ANY SOFTWARE, OR ANY PART THEREOF.

## **10. GENERAL**

**10.1 Notices.** Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be: (i) delivered in person; (ii) sent by first class registered mail, or air mail, as appropriate; or (iii) sent by overnight air courier. Notice to Company shall be sent to the address set forth on the cover of this Agreement. Notice to Perfect shall be delivered to: Perfect Commerce, Inc., 909 Walnut Street, Suite 200, Kansas City, Missouri 64106, Attention: General Counsel. Either Party may change its address for notice by notice to the other Party given in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, three (3) business days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service.

**10.2 Representations.** Each Party represents and warrants that: (i) It is duly organized, validly existing and in good standing under the laws of its state of domicile; (ii) It has the power and authority to execute, deliver and perform under this Agreement; and (iii) This Agreement constitutes a valid and binding obligation enforceable in accordance with its terms.

**10.3 Employee Solicitation.** Company acknowledges that Perfect's business is dependent upon being able to adequately staff projects with qualified persons and adequately utilize its employees and independent contractors. Company shall not, directly or indirectly, for itself, or on behalf of any other person, firm, corporation or other entity, whether as principal, agent, employee, stockholder, partner, member, officer, director, sole proprietor, or otherwise, solicit, participate in or promote the solicitation of Perfect's employees or independent contractors to leave the employ or service of Perfect, during the period such employee or independent contractor is working with Company and for one (1) year immediately following the period for which such employee or independent contractor last performed services for the Company.

**10.4 Assignment.** Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by Company, in whole or in part, whether voluntarily or by operation of law, except that Company may assign this Agreement in connection with a sale of its assets, merger or consolidation or other transaction commonly known as a business combination. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding anything to the contrary, Perfect shall have the right to subcontract any of its obligations hereunder to third parties, provided that Perfect shall remain primarily responsible for the performance of any such obligations.

**10.5 Arbitration and Governing Law.** Any controversy or claim arising out of or relating to this Agreement shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Any such controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. Either Company or Perfect may seek any interim or preliminary relief from a court of competent jurisdiction necessary to protect the rights or property of Company or Perfect pending the completion of arbitration. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Florida, without reference to conflict of laws principles. 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. The Parties irrevocably and unconditionally (1) agree that any suit, action or legal proceeding arising out of or relating to this Agreement may

be brought in a court of appropriate jurisdiction in Palm Beach County, Florida; (2) consent to the jurisdiction of each such court in any suit, action or proceeding; and (3) waive any objection which it may have to venue of any such suit, action or proceeding in any of such courts.

**10.6 Independent Contractors.** The relationship of Perfect and Company established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed or implied to give either Party the power to direct or control the day-to-day activities of the other or constitute the Parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.

**10.7 Publicity.** Both Parties agree to create and issue a mutually agreeable press release relating to the subject matter of this Agreement within thirty (30) business days of the signing of this Agreement. The Parties agree that any press release, public announcement, confirmation or other information regarding this Agreement or the transactions contemplated hereby shall be made only after each Party has approved in writing the time, form and content of any such information to be disseminated to third parties or the public. Company hereby grants Perfect the right to refer to the name of Company and Company's products or services, in its client listings, on its web site, in a client profile, and in future press releases. Provided that Perfect is performing in a satisfactory manner, Company will act as a reference for the Services, including providing access and availability of Company management for these purposes at times that are convenient for Company.

**10.8 Miscellaneous.** In the event that any provision of this Agreement conflicts with governing law or if any provision is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction: (i) such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law; and (ii) the remaining terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect. The failure of either Party to enforce at any time any of the provisions of this Agreement shall not be deemed to be a waiver of the right of either Party thereafter to enforce any such provisions. No waiver, amendment or variation to this Agreement shall be valid unless in writing and signed by both Parties. Except for the obligation to make payments, nonperformance of either Party shall be excused to the extent that performance is rendered impossible by Force Majeure. This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same Agreement. Section and Attachment headings are for ease of reference only and do not form part of this Agreement. This is an integrated Agreement and all exhibits, schedules and attachments hereto and incorporated herein constitute the entire, final, complete and exclusive agreement between the Parties and supersede all previous agreements, intentions, or representations, oral or written, relating to this Agreement. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each Party. Both Parties acknowledge having read the terms and conditions set forth in this Agreement and all attachments hereto, understand all terms and conditions, and agree to be bound thereby. No employee, agent, representative, or affiliate of Perfect has authority to bind Perfect to any oral representations or warranty concerning the Software or the Services. Any written representation or warranty not expressly contained in this Agreement (including any Attachments) will not be enforceable.

**ATTACHMENT 1**

**SERVICES AND FEE SCHEDULE**

**SERVICES**

Search Manager					
Search Manager	Up to 1,000	\$24,500	\$75,000 (subject to adjustment after June 30, 2008)	January 3, 2006 through June 30, 2011	The term service fee for Search Manager shall automatically renew for successive periods of one (1) year unless either party gives notice of its intent not to renew such term no later than ninety (90) days prior to the end of the initial term or any such twelve month renewal period.

**Managed Content Services**

- Perfect shall provide Managed Content Services to Company for up to a net amount of seventy-five (75) Catalogues with no limit on the number of SKUs per Catalogue.
- "Managed Content Services" include the following:
  - Perfect will publish electronic Catalogues, in the form of a Catalogue Update Package ("CUP") or a Price Update Package ("PUP"), as applicable, via a secure FTP site maintained by Perfect which is password protected, with such password only provided to Company, Perfect employees and third party service providers with a need to know basis.
  - Perfect shall make commercially reasonable efforts to deliver an initial Catalogue with up to 5,000 SKU's within ten (10) business days following receipt of an electronic Content file, in proper format, from the applicable Supplier. For Catalogues over 5,000 SKU's, Perfect shall make commercially reasonable efforts to deliver an initial Catalogue within twenty (20) business days following receipt of an electronic Content file, in proper form, from the applicable Supplier. Perfect shall make commercially reasonable efforts to provide Catalogue updates within three (3) business days and price updates within two (2) business days following receipt of an electronic Content file, in proper form, from the applicable Supplier.
  - For purposes of this agreement, "Catalogue" means one set of Content from one Supplier, under a single TP/ID prepared for and delivered to one Company TP/ID. If Company has multiple TP/ID's and each TP/ID desires a Catalogue from the same Supplier, then each delivery for each different TP/ID constitutes a separate delivered Catalogue.
- Company obligations include the following:
  - Company will develop Catalogue format definition (categorization, SKU's, product descriptions, and product pricing) and communicate to its suppliers, Company's content and formatting requirements; such as product categorizations, specific SKU's to be included, full description of the applicable products, units of measure, and negotiated contract pricing.
  - Company will provide timely assistance to Perfect so Perfect can successfully complete its obligations hereunder.
  - Company understands and acknowledges that any additional services, such as supplier selection strategy, supplier rollout strategy and Perfect implementation services are not covered under this Attachment 1.
- Initial refinement of Catalogues over the initial seventy-five (75) shall be at a cost of \$1,000 each.
- Perfect will allow Company to have twenty-two thousand (22,000) Inquiry Access Users, such users to be limited to search capabilities only.
- Perfect will provide scheduled access to its staging environment no later than March 31, 2006 for the purpose of validating interoperability between Company's system and Search Manager.

**Additional Term**

- Perfect shall charge each Company Supplier which is not a current client of Perfect an annual Fee of \$480.

**Search Manager and Managed Content Services**

- The Implementation Fee of \$24,500 will be paid in three payments. The first payment of \$8,000 is due and payable in full on January 15, 2006. The second payment of \$8,000 is due and payable in full on February 15, 2006. The third payment of \$8,500 is due and payable in full on March 15, 2006.
- The Search Manager Annual Service Fee of \$75,000 shall commence in May, 2006 and be paid as follows: (i) \$6,250 on May 1, 2006; (ii) \$6,250 on June 1, 2006; and thereafter (iii) beginning July 1, 2006 and the first day of each third month thereafter, quarterly increments of \$18,750 ("Quarterly Search Manager Fee"). Beginning with the Annual Service Fee for the year commencing July 1, 2008, Perfect shall be entitled to increase the Annual Service Fee for each successive year by applying the Consumer Price Index listed in the Wall Street Journal for the previous twelve month period.
- The Year 1 Annual Service Fee of \$75,000 shall include the initial refinement fees for up to seventy five (75) Catalogues.
- The Search Manager Train-the-Trainer Program shall be conducted for a Fee of \$2,000.
- The Annual Catalogue Maintenance Fee of \$500 per enabled Catalogue after the initial seventy five 75 Catalogues shall be paid in quarterly increments of \$125 ("Quarterly Catalogue Maintenance Fee"). Each Quarterly Catalogue Maintenance Fee shall be due and payable in full starting on the first day of each quarter following enablement of that respective Catalogue.

**Expenses**

- The Company shall reimburse Perfect for all out-of-pocket, travel-related expenses actually incurred by Perfect in performing the Services hereunder, provided the Company has pre-approved the expenses.

**ATTACHMENT 2**  
**SERVICE LEVEL AGREEMENT**

**DEFINITIONS**

Unless otherwise defined in this Service Level Agreement ("SLA"), capitalized terms used herein shall have the meanings assigned to such terms in Section 1 of the Agreement. The following definitions shall be used for purposes of this SLA:

**Managed Environment Availability.** The total number of minutes in a calendar month, less any Planned Downtime or downtime due to Force Majeure.

**Planned Downtime.** Scheduled unavailability of the Managed Environment, including but not limited to, the performance of system upgrades, enhancements and routine maintenance activities. Perfect will provide a schedule for recurring Planned Downtime (e.g. weekly system maintenance) and give Company not less than twenty-four (24) hours notice of non-recurring Planned Downtime.

**Unscheduled Service Outage.** Interruptions to service that result in the unavailability of the Managed Environment to Company, not including Planned Downtime or interruptions due to Force Majeure.

**MANAGED ENVIRONMENT**

Perfect will use commercially reasonable efforts to provide a managed environment ("Managed Environment") that will include the hardware and software necessary to support the Managed Environment Availability service levels specified below. The Managed Environment is restricted to the production systems environment and the application(s) located at Perfect's hosting site. The Managed Environment specifically does not include: (i) development, staging or test environments, (ii) any elements of the Internet, (iii) any part of Company's environment not permanently located at the Perfect hosting site, or (iv) application components outside the Perfect site firewall. The Managed Environment shall only include hardware, software and equipment owned by Perfect. For purposes of this SLA, the Managed Environment will support the following software applications (or any successor or replacement software applications made available by Perfect):

**Search Manager**

**MANAGED ENVIRONMENT AVAILABILITY**

Minimum Monthly Managed Environment Availability	Company Service Credits
98%	<98% ≥ 95% = 12.5% of the Monthly Fee <95% ≥ 90% = 25% of the Monthly Fee <90% = 50% of the Monthly Fee

Perfect actively monitors the availability of the Managed Environment and will accumulate the number of downtime minutes during an Unscheduled Service Outage. Planned Downtime shall be necessary on a regular basis or in some emergencies to perform corrective maintenance. The following metric shall be used to calculate the Monthly Managed Environment Availability percentage for each full month that this SLA is in effect:

$$\text{(Managed Environment Availability – Unscheduled Service Outage)} \div \text{Managed Environment Availability}$$

**SERVICE CREDITS**

in the event Perfect fails to meet any of the service levels herein, and such failure causes the Managed Environment Availability to fall below the applicable percentage set forth above, Perfect will credit Company as set forth above in accordance with the applicable percentage achieved. Credits will be computed and applied automatically and will be credited towards the next invoice following such failure to meet the applicable service level. This SLA states Perfect's sole and exclusive warranties, and Company's sole and exclusive remedies for Perfect's failure to achieve the specified service levels herein. "Monthly Fee" shall mean: (i) the actual monthly fee paid by Company that corresponds to the software application whose Minimum Monthly Managed Environment Availability goal was not achieved, or (ii) in the event Company pays on an annual basis, an amount that is 1/12<sup>th</sup> of the annual fee paid by Company in the applicable year that corresponds to the software application whose Minimum Monthly Managed Environment Availability goal was not achieved. No Service Credits will be given for events resulting from conduct of Company or its representatives, including (i) negligence of Company or its representatives, (ii) a failure or malfunction resulting from scripts, applications, equipment, or services provided by Company, or (iii) outages initiated by Perfect at the request or direction of Company for maintenance, back up, or other purposes.

**UNSCHEDULED SERVICE OUTAGE NOTIFICATION**

Perfect shall use commercially reasonable efforts to provide Company with: (i) the apparent cause of an Unscheduled Service Outage, (ii) Perfect's response time to such Unscheduled Service Outage, and (iii) repair time information, following the resolution of an Unscheduled Service Outage that results in a service level falling below the level set forth herein. Please note that in the event of an Unscheduled Service Outage, Perfect's first priority shall be to re-establish service and restore the Managed Environment to full availability. Perfect has designed and implemented various methods for detecting outages as well as potential problems that might occur in the Managed Environment. The detection software is configured to notify support immediately. Perfect shall notify Company's designated contact(s) within sixty minutes of any Unscheduled Service Outage by email or by posting on Perfect's service desk and promptly again by email upon resolution.

**PROBLEM MANAGEMENT AND SECURITY**

Perfect's problem management and escalation process can be found on our website at [www.perfect.com](http://www.perfect.com) or sent via email upon request. All transactions between Perfect and Company that are the subject matter of this SLA will take place with 128 bit SSL encryption or using digital certificates, whichever is applicable. Both Perfect and Company will implement commercially reasonable levels of security protection against possible Internet aggression or corruption and upgrade such security protection against new threats when they are identified. Each Party has the responsibility of the physical security of their respective production platform. Perfect and Company must create a secure connection to allow data exchange and automatic integration between them, which is accessed by pulling/pushing asynchronous messages from/to Perfect or Company through the HTTPS protocol.