

## **PICTURE PERFECT PRICING TERMS AND CONDITIONS**

THESE TERMS AND CONDITIONS (these “Terms”) apply to all Access to and/or use of the Service, and constitute an agreement between HVAC Business Solutions, LLC, a Texas limited liability company (“HBS”), and each individual or entity that Accesses the Picture Perfect Pricing Service (each, a “User”). By Accessing the Service, each User expressly agrees that it has read, understands, and agrees to be bound by these Terms.

### **ARTICLE I: UPDATES TO TERMS**

The User expressly agrees that HBS may, at any time, and from time to time, modify, amend, supplement, or replace these Terms, in its sole discretion, and a User’s subsequent Access of the Service shall constitute such User’s agreement to the modified, amended, supplemented, or replaced Terms. A User’s sole and exclusive remedy for disagreeing with changes to these Terms shall be the immediate cessation of Access to or use of the Service.

### **ARTICLE II: PERMITTED USE OF SERVICE**

2.01 — Grant of License: HBS hereby grants to User a personal, non-exclusive and non-transferable license to Access and receive the Service and the Modules identified in the License Agreement, and use the Documentation, including but not limited to Access to the Service via any computer device (including mobile devices and tablets) as HBS may permit from time to time. This license may be revoked by HBS at any time, in its sole discretion.

2.02 — Changes: At any time, and from time to time, HBS may make updates, enhancements, or other modifications to the Service by adding or subtracting functionality, in its sole discretion. HBS may provide such updates, enhancements, or modifications to User at no cost; or, in HBS’s sole discretion, HBS may provide such updates, enhancements, or modifications to User for a separate fee, as determined by HBS in its sole discretion.

2.03 — Limitation on Access: Each User shall use the Service only through (i) the Software, (ii) the Web Site (if any), or (iii) one tablet or mobile device. User shall not copy, download, or create a mirror of any component of the Service, or use the Service on more than one tablet or mobile device simultaneously.

2.04 — Access Control: Each User may create its own Credentials for purposes of Accessing the Service. User hereby accepts full responsibility for, and shall be liable for, all Access to the Service in connection with its Credentials, any and all damages caused by Unauthorized Access using its Credentials, and all expenses or damages incurred by HBS in maintaining the security of such User’s

Credentials, including but not limited to resetting a password or dealing with or preventing Unauthorized Access. User shall Access the Service only using its own Credentials, and shall not use the Credentials of any other User. Each User shall be responsible for the confidentiality and maintenance of its Credentials. User agrees to immediately notify HBS of any unauthorized use of the User’s name or Credentials or any other breach of security. HBS will not be liable for any loss or damage arising from any User’s failure to comply with this Section.

2.05 — Back-Up: HBS may, from time to time, perform routine back-up of Data within the Service, including User Content, using commercially reasonable measures. HBS may keep and/or dispose of such back-ups in its sole discretion. HBS’s maintenance of any back-ups are solely for its own use, and HBS does not guarantee that any Data will be preserved, and/or maintained for any period of time.

2.06 — Risk of Loss and Inaccuracies: User assumes the risk of loss to all Data within the Service. Although HBS attempts to ensure the validity of all Data within the Service, User acknowledges and agrees that the Data may contain errors, inaccuracies, and omissions. User further assumes any and all risk of loss, harm, or damage associated with Access to the Service and all Third Party Content. Without limiting the foregoing, User acknowledges and agrees that the Documentation and the Data within the Service may include information certified by third parties (including but not limited to AHRI) and information generated in connection with marketing materials or common industry practices, and that such information may not always agree. User represents and warrants that it has sufficient knowledge and experience to interpret the difference between such information (for example, the difference between certified BTUs and tonnage), and to appropriately utilize such information in its business, and that User is not relying on HBS to correlate or interpret such information, or to resolve discrepancies between certified and uncertified information. User accepts the sole responsibility of presenting any information derived from the Service to User’s end customer(s).

2.07 — Optional Training: HBS may, in its reasonable discretion, provide training to User in the use of the Service. Such training may be provided at no cost or, in HBS’s sole discretion, HBS may charge a separate fee for such training.

2.08 — Mandatory Training: In the event User requires an excessive amount of Support concerning use of the Service, as reasonably determined by HBS, User shall, at User’s sole expense, complete additional training

provided by HBS on the use of the Service. Such training may be provided at no cost or, in HBS's sole discretion, HBS may charge a separate fee for such training. In the event User declines such additional training, HBS reserves the right to terminate all or any part of User's Access to the Service.

2.09 — Support: HBS may provide email, telephone, and other technical support for the Service, upon request by any User (collectively, "Support") as HBS determines to provide, in its sole discretion. HBS may charge fees for Support, as detailed below. HBS reserves the right to discontinue providing any Support, or any levels of Support, at any time, in its sole discretion.

### **ARTICLE III: MODULES AND USER CONTENT**

3.01 — Modules: User's license of the Service includes the Modules identified and selected in the License Agreement. User may not Access any Modules that are not included in the License Agreement without HBS's consent. From time to time, User and HBS may modify the scope of the Service available to User by adding or subtracting Modules from the Service. HBS reserves the right to discontinue User's Access to any Module, or discontinue Support for any Module, at any time.

3.02 — User Content Creation and Control: User may input, retrieve, and modify User Content in connection with any one or more Modules. Each Module shall determine the extent to which User may permit other users to interact with such User's User Content. User may interact with Data and other content created or made available by other users of the Service, to the extent permitted by HBS and such other users, and in accordance with the functionality of the Service and the applicable Module(s).

3.03 — Reporting: Each User shall control the reporting of the results of its use of any Modules. A User may authorize the reporting of results to other users of the Service and/or the applicable Module(s), and User acknowledges that the Service and/or the applicable Module(s) may automatically report results, and by use of the Service and the applicable Module(s), User consents to such reporting.

3.04 — User Content Ownership: User represents and warrants to HBS that it has the full right, title, and authority to use any content, material, or intellectual property incorporated into all User Content, including but not limited to descriptions, prices, and pictures. This representation and warranty shall survive expiration of these Terms. All User Content shall be the sole and exclusive property of HBS and HBS shall own all of the rights, title and interests to such User Content, including but not limited to any and all copyrights, patents and trade secrets related thereto. HBS reserves the right to

duplicate, alter, or otherwise modify any User Content, in its sole discretion.

3.05 — User Content Modification: User may input, retrieve, and modify User Content only in connection with the Service. User shall not modify any Data or information contained within the Service and/or any Module except User's User Content, and the User Content of other users for which User has been granted Access.

### **ARTICLE IV: TERM OF LICENSE**

4.01 — Term and Renewal: The term of User's license of the Service shall be as selected in the License Agreement. These Terms shall continue and automatically renew with each renewal of the License Agreement. In the event the License Agreement terminates, User's license and right of Access to the Service shall immediately terminate.

4.02 — Deactivation: HBS reserves the right to disable and deny all Credentials and terminate User's Access to the Service in the event User violates these Terms. Upon termination of User's Access to the Service for any reason, HBS may remove, migrate, destroy, or convert (as the case may be) all User Content in its possession or stored in the Service.

4.03 — Destruction of Content: HBS reserves the right to delete any and all User Content in the Service after a sufficient period of inactivity by User, or after termination of User's Access to the Service, in HBS's sole discretion.

### **ARTICLE V: PAYMENT**

5.01 — License Fees: HBS shall charge User fees for the license of and Access to the Service. All fees, both in dollar amounts and length of license, shall be in accordance with HBS's standard pricing schedule in effect as of the date User first licenses the Service (or, in the event of a renewal, on the date User renews its license of the Service). In the event that, at the time of any renewal, HBS has discontinued the pricing or package previously licensed by User, this license will renew at a package level that most closely corresponds with the package previously licensed by User, in HBS's sole discretion. HBS reserves the right to offer discounts or promotions at any time, and/or to modify its pricing schedule between renewals.

5.02 — Support/Training Fees: HBS may, in its sole discretion, charge User fees for Support and/or Training in connection with User's Access to the Service. Support and/or Training may be charged on a fixed or hourly basis, at HBS's then-current rates.

5.03 — Payment Terms: All fees and charges payable hereunder shall be paid according to the following

payment terms, unless otherwise agreed to in writing by HBS:

- (a) Fixed Fees: All fixed fees, or fees of a readily determinable amount, shall be due in full, in advance; and
- (b) Variable Fees: All other fees and charges, including hourly fees (such as hourly Support or training fees), shall be invoiced by HBS, and User shall pay any such invoice in full within fifteen (15) days of receipt.

5.05 — Modification of Fees: HBS reserves the right to increase or decrease its fees at any time, and from time to time, in its sole discretion. Any modification of fees shall be prospective only, and shall not subject a User to additional charges for a license already purchased, or entitle User to any refund of previously paid fees.

5.06 — Taxes: User shall pay any and all applicable taxes relating to these Terms and its use of the Service and/or any Support, including local and state excise, sales, privilege, storage, use delivery, or consumption taxes. User shall additionally be solely responsible for the collection and payment of any state or local sales tax associated with sales made using the Service, and agrees to indemnify, defend, and hold HBS harmless from and against any liability that HBS may incur relating to such tax.

5.07 — Termination of License: In the event that User's license of and/or Access to the Service is terminated for any reason, HBS shall retain all amounts paid by User before the date of such termination, including any pre-payments, and User shall not be entitled to any refund.

5.08 — Payment Obligations: Termination of these Terms shall not relieve User from any payment obligation under these Terms. All payment obligations of User under these Terms shall survive termination and cancellation of these Terms.

5.09 — Chargeback Policy: In the event of a reversal of a credit or debit card charge made by User, as a result of a chargeback or dispute initiated by User, User shall be liable to HBS for the full amount of the charged back or disputed fees, plus all costs and expenses incurred by HBS in collecting such amounts, including attorney's fees and collection costs. User acknowledges and agrees that in the event of any legitimate dispute regarding charges made by HBS, User shall resolve such matter with HBS directly. User is expressly forbidden from charging back or disputing valid credit or debit card charges in order to recover license fees owing to HBS hereunder.

## **ARTICLE VI: USER RESTRICTIONS**

6.01 — Authorized Use: User shall prevent Unauthorized Users from Accessing the Service, and User shall prevent Unauthorized Access to the Service.

6.02 — Competing Business or Service: User shall not purchase a license, gain Access, modify, or use the Service or any materials incident thereto to operate or develop a business or service similar to HBS and/or the Service, or to develop any software, applications, web sites, or other items that are similar to any Modules or other components of the Service, without the prior written consent of HBS.

6.03 — Lawful Purpose: User represents and warrants that its Access to the Service shall not violate any contract, statute, rule, regulation, or other obligation under which User is bound. User represents and warrants that it shall not Access the Service to conduct or solicit the performance of any business or activity that is tortious or prohibited by law.

6.04 — Export Assurance: User shall not disclose, export, distribute, or transfer any part of the Service to any third-party individual or entity in any division, affiliate, or subsidiary of User located in any country other than the United States. User shall not perform any act involving the Service which is in conflict with or in violation of the export laws or regulations of the United States.

6.05 — Accurate Information: User represents and warrants that any and all information provided by it in connection with these Terms and the Service, including but not limited to any User Content and information transmitted through the Service by User, are true, accurate, complete, and current.

6.06 — Indemnification: User shall indemnify, defend, and hold HBS harmless from and against any and all claims, liability, losses, damages, or expenses (including all attorneys' fees and expenses) incurred by HBS resulting directly or indirectly from claims brought by other parties (a) regarding User's use of or Access to the Service; (b) as a result of a breach of these Terms by User; (c) as a result or arising out of User's transmission of information through the Service, and (d) regarding any User Content. This provision shall survive the termination of these Terms.

## **ARTICLE VII: WARRANTIES OF HBS**

**7.01 — EXCLUSION OF WARRANTIES: HBS MAKES NO WARRANTIES WITH RESPECT TO THE SERVICE OR ANY COMPONENT THEREOF, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF**

**FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES OF MERCHANTABILITY. HBS HEREBY DISCLAIMS AND USER HEREBY WAIVES ALL SUCH WARRANTIES TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW. THE SERVICE AND ALL COMPONENTS THEREOF ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. USER HEREBY WAIVES ANY AND ALL WARRANTIES AS TO THE RESULTS OBTAINED FROM OR THE ACCURACY OR RELIABILITY OF THE SERVICE.**

**USER'S SOLE REMEDY, IN THE EVENT USER IS DISSATISFIED WITH THE SERVICE IN ANY RESPECT, IS TO TERMINATE THIS LICENSE AT THE END OF THE THEN-CURRENT LICENSE TERM AND TO NOT RENEW OR CONTINUE ACCESSING THE SERVICE. USER'S FAILURE TO TIMELY TERMINATE THIS LICENSE AND/OR USER'S RENEWAL OF THIS LICENSE SHALL CONCLUSIVELY EVIDENCE USER'S ACCEPTANCE OF THE SERVICE.**

7.02 — Limitation of Damages: HBS shall not be liable to User under these Terms for (a) any consequential, exemplary, incidental, lost profits, lost expenses, or punitive damages, regardless of whether HBS has been advised of the possibility of such damages in advance or whether such damages are reasonably foreseeable; (b) the use, performance, or operation of the internet or use of the internet by User; (c) loss of the Service or any component thereof (including but not limited to User Content or any Data), regardless of the form of action, whether in contract or tort, including negligence, regardless of whether HBS has been advised of the possibility of such damages in advance or whether such damages are reasonably foreseeable; (d) any failure to connect to or Access the Service, for any reason whatsoever; or (e) any contracts or agreements entered into between User and any third party, whether or not such agreement was based on information provided through the Service, arranged through the Service, or otherwise, it being agreed that User is solely responsible for any and all agreements between itself and third parties. Any damages owed by HBS to User under any circumstances shall be strictly limited to the amount User has paid HBS over the previous twelve (12) month period in connection with Users Access to and use of the Service.

7.03 — Force Majeure: HBS shall not be liable to User for failing to perform its obligations under these Terms because of circumstances beyond the control of HBS. Such circumstances shall include, but not be limited to, any acts or omissions of any government or governmental authority, natural disaster, act of a public enemy, riot, sabotage, dispute or differences with workmen, power failure, acts of God, terrorism, or any events reasonably beyond the control of HBS.

7.04 — Waiver of Warranties: User hereby acknowledges and agrees that HBS and any officers, employees, agents, directors, and independent contractors of HBS have not made or granted to User any express warranties concerning the Service.

7.05 — Third Party Content: User hereby acknowledges and agrees that HBS may incorporate, link to, or integrate Third Party Content into the Service, and that HBS makes no warranties of any kind, express or implied, with respect to such Third Party Content. All Third Party Content is provided to User "As Is", and with all faults, and User acknowledges and accepts the risk of Accessing such Third Party Content.

## **ARTICLE VIII: INTELLECTUAL PROPERTY**

8.01 — Ownership and Title: Title to the Service, including ownership rights to associated report formats, screen displays, menu features, source code, patents, copyrights, trademarks and trade secrets therein shall be the exclusive property of HBS.

8.02 — Confidential Information: User shall not disclose Confidential Information except to Authorized Persons. User shall hold Confidential Information in strict confidence and shall not duplicate, use or disclose Confidential Information except as permitted under these Terms.

8.03 — Trade Secrets: User hereby acknowledges and agrees that the Confidential Information derives independent economic value (actual or potential) from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use; are the subject of reasonable efforts under the circumstance to maintain their secrecy; and are trade secrets of HBS. This Section shall survive the termination of these Terms.

8.04 — Reverse Engineering: User shall not reverse engineer any portion of the Service.

8.05 — Copies: User shall not copy any portion of the Service without the prior written consent of HBS. HBS shall make back-up copies of identified portions of the Software and/or the Data available to User if, in the reasonable discretion of HBS, such back-ups are necessary for User's use of the Service.

8.06 — Modifications and Advancements: User shall not modify any portion of the Service, including but not limited to the source code of the Software, without the prior written consent of HBS. HBS shall not be required to update or modify any part of the Service. Any and all Advancements shall be and become the property of HBS,

without compensation to User, whether or not such Advancements are created by HBS, by User, and/or are the result of any suggestions, recommendations, or requests from User. HBS shall have the right, but not the obligation, to prepare, file, and prosecute both domestic and foreign patent applications on any such Advancements which appear to be patentable, and shall bear all costs thereof. User shall cooperate, to the extent reasonably requested by HBS, in securing data and signatures to enable the prompt filing and prosecution of patent applications on such Advancements.

**8.07 — No Contest:** User shall not contest or aid in contesting the ownership or validity of the trademarks, service marks, trade secrets, or copyrights of HBS, including but not limited to those relating to the Service.

**8.08 — Continuation:** The terms and provisions of this Article shall survive termination and cancellation of these Terms.

#### **ARTICLE IX: MISCELLANEOUS**

**9.01 — Assignments:** All assignments of rights under these Terms by User without the prior written consent of HBS shall be void.

**9.02 — Entire Terms:** These Terms contain the entire understanding of the parties concerning the subject matter hereof.

**9.03 — Amendments and Modifications:** These Terms may only be amended, altered, or modified with the written consent of HBS. HBS may alter, amend, or modify these Terms upon written notice to User. Any oral amendment, alteration, or modification shall be void.

**9.04 — Severability:** If any provision of these Terms are rendered invalid, the remaining provisions shall remain in full force and effect.

**9.05 — Captions:** The headings and captions of these Terms are inserted for reference convenience only and do not define, limit or describe the scope or intent of these Terms or any particular section, paragraph, or provision.

**9.06— Governing Law:** These Terms are governed by the laws of the State of Texas. User hereby consents to the exclusive jurisdiction and venue of courts in Harris County, Texas in all disputes arising out of or relating to these Terms.

**9.07 — Waiver:** Waiver of breach of these Terms shall not constitute waiver of another breach. Failure to enforce a provision of these Terms shall not constitute a waiver or create an estoppel from enforcing such provision.

**9.08 — Relationship of the Parties:** It is agreed that the relationship of the parties is primarily that of licensor and licensee. Nothing herein shall be construed as creating a partnership, an employment relationship, a joint venture, or an agency relationship between the parties, or as authorizing either party to act as agent for the other. User is permitted to use the HBS name only for the purposes of utilizing the Service, as provided herein. User has no right to use the HBS name, logo, trademarks, or other intellectual property for any other purpose. User will not suggest to any other User or to any other third party that User is acting on behalf of HBS or that HBS has approved of or endorses its products or services.

#### **ARTICLE X: DEFINITIONS**

In addition to the terms defined elsewhere in these Terms, the following terms shall have the following meanings:

- (1) **Access:** The term “access” and variants thereof (including, without limitation, “Accessing” and “Accessible”) shall mean to store data in, retrieve data from, or otherwise approach or make use of (directly or indirectly) through electronic means or otherwise.
- (2) **Advancements:** The term “Advancements” shall include all modifications, improvements, additions, or variations to the Service, the Software, and/or the Web Site, including but not limited to new Modules, regardless of whether such items were created, paid for, and/or inspired by HBS, User, or any third party.
- (3) **Authorized Person:** The term “Authorized Person” shall mean any User and any person or organization who is authorized in writing by HBS to receive Confidential Information and who agrees to maintain the confidentiality of such Confidential Information.
- (4) **Confidential Information:** The term “Confidential Information” shall mean these Terms, all Software, Web Sites, all Documentation, any Other Terms and Conditions, and any and all other information disclosed by HBS to User which is proprietary or confidential at the time such information comes into the possession or knowledge of User and which is not: (i) already known to User; (ii) in the public domain; (iii) conveyed to User by a third party without obligations of confidentiality; (iv) released by HBS without restriction; (v) independently developed by User; or (vi) required by court order to be released by User.

- (5) Credentials: The term “Credentials” shall mean any authenticating credentials (e.g. a username and password) assigned by HBS to a User, or generated by such User, for purposes of Accessing the Service.
- (6) Data: The term “Data” shall mean any and all data and information used, stored on or transmitted through the Service, including (without limitation) all User Content.
- (7) Documentation: The term “Documentation” shall mean any and all written manuals, user’s guides, and Other Terms and Conditions, as made available to User by HBS in printed or electronic form as part of the Service.
- (8) License Agreement: The term “License Agreement” means that certain Picture Perfect Pricing License Agreement pursuant to which User’s Access to the Service was purchased.
- (9) Module: The term “Module” shall mean a discrete (i) Software package, extension, tool, or add-on, (ii) enhancement, modification, or additional features for another Module, or (iii) service, Support, training, or other non-Software aspect of the Service; each of which can be added to or removed from the Service at any time, or from time to time.
- (10) Other Terms and Conditions: The term “Other Terms and Conditions” shall mean any written statement of policies (in printed or electronic form) concerning User Access to the Web Site, the Software, and/or the Service, as may be adopted by HBS and as modified by HBS from time-to-time.
- (11) Service: The term “Service” shall mean the suite of business services commonly known as Picture Perfect Pricing, which enable the creation and use of flat rate price books in the HVAC industry, including any modifications thereto.
- (12) Software: The term “Software” shall mean that certain executable source code package created and maintained by HBS, through which HBS delivers or provides the Service to the User, whether or not all or any part of such executable source code runs on a Web Site, the local computer or network of any User, or a tablet or mobile device of any User. The term “Software” includes any applications, apps, or other executable packages that are part of the Service.
- (13) Technology: The term “Technology” shall mean any and all information, data, applications, methodologies, techniques, ideas, solutions, processes, adaptations, products, concepts, procedures, works of authorship, Software, Web Sites, scripts, Documentation, flow charts, diagrams, software libraries, databases, data structures, data models, data dictionaries, fields, records, screen displays and graphic interfaces.
- (14) Third Party Content: The term “Third Party Content” shall mean Technology owned by a third party that is incorporated in whole or part into the Service, or linked to the Service, including but not limited to Technology of HVAC manufacturers and suppliers.
- (15) Unauthorized Access: The term “Unauthorized Access” shall mean any Access to the Service, the Software, the Documentation, or the Web Site except for the exclusive purposes of (i) using the Service; (ii) Accessing, retrieving, or viewing Data; (iii) inputting and retrieving User content; (iv) creating, using, or editing price books; (v) evaluating the performance, utility and functions of the Service; and (vi) training other Users in the use of the Service. The term “Unauthorized Access” shall also mean any Access to the Service, the Software, the Documentation, or the Web Site that is in violation of these Terms, the Documentation, or any Other Terms and Conditions.
- (16) Unauthorized User: The term “Unauthorized User” shall mean any individual who Accesses the Service, the Software, the Documentation, or the Web Site except for: (i) Users authorized by HBS to Access the Service for the purposes of selling and/or pricing HVAC services, evaluating the performance, utility and functions of the Service, and/or training Users in the use of the Service; (ii) Users authorized by HBS to Access the Service for the purposes of Accessing, retrieving, and viewing Data, and inputting and retrieving User Content; and (iii) Authorized Persons who are authorized in writing by HBS to Access the Service, Software, Documentation, and/or Web Site.
- (17) User Content: The term “User Content” shall mean any and all data and information created, stored on or transmitted through the Service by a User, including but not limited to parts, prices, markup values, images, and any reports or

summaries relating to such User's (or any other Users') use of the Service.

- (18) Web Site: The term "Web Site" shall mean any web site developed by or for HBS for use as a web administration module for the Service, which is Accessible by a User via the internet, including all electronically stored information and/or communications stored on or transmitted through such Web Site.