

## **Website & CMS VE Add-Ons (Vision) (Pagefreezer)**

ACCEPTANCE OF THESE TERMS AND CONDITIONS AND EXECUTION OF AN ORDER FORM REFERENCING THESE TERMS AND CONDITIONS CREATES A CONTRACT (THE "AGREEMENT") BETWEEN YOU ("END-USER") AND PAGEFREEZER SOFTWARE INC. ("PAGEFREEZER") EACH A PARTY AND TOGETHER THE "PARTIES". IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS.

These Terms and Conditions were last updated on 14 February 2022 and are effective immediately upon the Effective Date of an Order Form.

### **1 DEFINITIONS**

"Applicable Law and Regulation" means any applicable law, rule, regulation, governmental order or decree or any legal or administrative process or proceeding.

"Affiliates" means any corporation, company and/or business entity directly or indirectly controlled by, controlling or under common control with a signatory of this Agreement; "Control" means ownership of more than 50% of the total issued share capital of such entity or being entitled to appoint one or more directors to the board of directors of such entity.

"End-User Data" means any and all information, content and electronic data owned or licensed, controlled and/or processed by the End-User that will be archived and stored by Pagefreezer on behalf of the End-User and/or captured and downloaded by the End-User, relevant to the provision of Services.

"Effective Date" means the date of the End-User's Order Form triggering the commencement of the Subscription Term and the start of Subscription.

"Knowledge Base" means the online resources for the use of Services, accessible via <https://www.pagefreezer.com/support/>, as updated from time to time. The End-User will have access to guidance resources to ensure the most enhanced use of Services and status updates in relation to planned outages, software updates, unforeseen Service breaks and/or incidents relating to the use of Services.

"Malicious Code" means internet or computer viruses, trojan horses, worms, salamis, back doors, logic bombs, time bombs, cancelbots, malwares, trapdoors, or any other harmful or malicious software codes, computer instructions, programming routines, or computer routines

that may damage, vandalize, subvert, disrupt, disable, detrimentally interfere with, surreptitiously intercept, shut down or expropriate computer systems including its security data, user data or personal information.

“Order Form” means the document setting out the subscription purchase by the End-User which will include a description of the Services, their functionality and pricing, any mutually agreed changes to such Services and/or amendments from time to time, the Subscription Terms and Conditions and any acceptable use policies.

“Services” means those Services purchased by the End-User which are specifically outlined in the applicable Order Form; more broadly, the Services made available by Pagefreezer being Website, Social Media, enterprise collaboration messaging archiving and End-User support provided by Pagefreezer for the End-User via <https://www.pagefreezer.com/support/>.

“Websites” means world wide websites registered to the End-User and/or its Affiliates and which have been registered by the End-User for use of the Services and for which Subscriptions to a Service have been purchased.

“Social Media” means social media and enterprise collaboration network accounts and/or profiles which are registered to the End-User and/or its Affiliates and which have been registered for use of the Services and for which Subscriptions to a Service have been purchased.

“Sitemap” means a sitemap.xml listing all links and modification dates in your website, which is published on your website and maintained by the End-User according to the specifications outlined on <https://www.sitemaps.org/index.html>

“Subscription” means the Services outlined in the Order Form are purchased on a Subscription basis for the Subscription Term set out in the Order Form.

“Subscription Term” means the period of which the provision of Services are agreed as specified in the Order Form and shall automatically renew unless cancelled by either Party.

## **2 PURCHASED SERVICES**

2.1 Provision of Purchased Services. Pagefreezer shall make the Services available to the End-User pursuant to this Agreement and the relevant Order Form(s) during a Subscription Term. The End-User agrees that its purchases hereunder are neither contingent on the delivery

of any future functionality or features nor dependent on any oral or written public comments made by Pagefreezer regarding future functionality or features.

2.2 Subscriptions. Unless otherwise specified in the applicable Order Form, (i) Services are purchased as Subscriptions, additional Subscriptions may be added to an existing Subscription Term at any time during such term and shall be prorated; (ii) the added Subscriptions shall renew subject to s10.2 unless otherwise cancelled; and (iii) Subscriptions may be reassigned to a new Website or Social Media account(s) replacing a former Website which no longer requires ongoing use of the Services.

### **3 USE OF THE SERVICES**

#### **3.1 Pagefreezer Services.**

3.1.1 Pagefreezer shall provide the Services as specified in the Order Form subject to the following requirements, (i) the End-User will be onboarded and provided information on the use of the Services and End-User support processes in addition to a demonstration of the Knowledge Base for guidance resources and updates on the ongoing Services and (ii) the Pagefreezer Services store and back-up the archived data in a designated Pagefreezer datacenter (which are located in the USA, Canada and the Netherlands). During the period of Subscription Pagefreezer will not override, change or destroy any archived copy except in connection with migrating the archive to another storage device and only after a copy has been placed on such storage device to which the archive is being migrated.

3.1.2 Access to certain portions of the Services requires registering an account with Pagefreezer (each, an "Account"). Following verification of your identity, the End-User shall select a username and password ("Login Information") for their Account. The End-User is responsible for managing and ensuring the security, confidentiality and authorized use of its Account's Login Information and are prohibited from sharing its Login Information or its Account. Pagefreezer strongly recommends that the End-User keep Login Information confidential, and shall notify Pagefreezer promptly of unauthorized access or use of its Account. In the event Pagefreezer, at its sole discretion, considers the End-User's Account to be vulnerable or to have been accessed or used inappropriately it may immediately cancel and terminate access to the Account without notice.

3.2 Litigation Hold. If the End-User wishes to place a litigation hold on some or all of the End-User Data archived by Pagefreezer for Services limited to Social Media this can be done by

the End-User directly via the Account, for Services that include Website please send an email to support@pagefreezer.com identifying the pages and dates to be held or provide notice using the web form made available on our website. Within one (1) business day after receipt of a request, we will confirm that we have received your request by sending an email to the relevant email address we have on file. Within two (2) business days after receipt of a request, we will flag those pages and dates so that they are identified as not to be deleted and confirm to you by email that the request has been completed. Within three (3) business days after the receipt of a request, We will export the pages and dates identified by you from the archives stored on our servers (the cost of this Service is price per gigabyte of the data exported). We will export the data in a printable format and/or its native format including the digital signatures and timestamps. We may change the process for implementing a litigation hold and shall update the Knowledge Base from time to time accordingly. Please consult the Knowledge Base for up to date information on these procedures.

3.3 Your Responsibilities. The End-User shall (i) be responsible for making each Website or Social Media available for archiving by Pagefreezer, (ii) be solely responsible for the accuracy, quality, integrity and legality of End-User Data and of the means by which the End-User acquired End-User Data, use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Pagefreezer promptly of any such unauthorized access or use, (iii) ensure that all Website pages or Social Media accessed by our Services are accessible from Internet without restrictions and that Pagefreezer software and Services are granted access to all of your Websites or Social Media, (iv) ensure that its Website contains a valid XML Sitemap, which is updated at least once per day containing an accurate list of all web page URLs in its Website that it requires Pagefreezer to access for the purpose of providing the selected Services, (v) specify your Websites or Social Media to be within the scope of our Services, ensure that your Websites or Social Media and each individual page within the scope of our Services are accessible to our software and Services and resolve any network problems, server overload or availability problems, or any other technical issues that may affect the accessibility and availability of your Websites or Social Media, (vi) arrange for any export of data from the archives stored on our server that you wish to obtain, (vii) use the Services only in accordance with the guidance found at the Knowledge Base and Applicable Law and Regulation, (viii) request an export of End-User Data from our servers after the termination of this Agreement subject to s10.5 (Return of Your Data) and (ix) be responsible for verifying and ensuring that under Applicable Law and Regulation the data generated by our Services are admissible in court proceedings or any other legal proceedings that you may wish to utilize the

data. The End-User shall not store anything on its Websites or Social Media registered for Services that Pagefreezer cannot lawfully copy.

3.4 Usage Limitations. Services may be subject to other limitations, such as, for example, limits on disk storage space and on the number of calls permitted to make against our application programming interface. Any such limitations are specified in this Agreement and as can be found in the Knowledge Base guidance resources. The Services provide real-time information to enable the End-User to monitor compliance with such limitations.

3.5 Third Party Services. For Services that Pagefreezer provides that capture data collected from Youtube, the Youtube Terms of Service (YouTube Terms of Service) and the Google Privacy Policy (Privacy & Terms – Google) apply.

#### **4 FEES AND PAYMENT FOR PURCHASED SERVICES**

4.1 Fees. The End-User shall pay all fees specified in any and all associated Order Forms except as otherwise specified herein or in any associated Order Form (“Subscription Fees”), (i) Subscription Fees are payable as quoted in the Order Form but for avoidance of doubt where a currency is not specified all Subscription Fees shall be payable in United States Dollars (USD) excluding any applicable taxes (ii) Subscription Fees are based on Services purchased and not actual usage, (iii) payment obligations may not be canceled and Subscription Fees paid are non-refundable, and (iv) the number of Websites or Social Media Subscriptions purchased cannot be decreased during the relevant Subscription Term stated on the Order Form. Subscription Fees are based on monthly periods that begin on the on the Effective Date triggering the start of the Subscription Term and each monthly anniversary thereof; fees for Subscriptions added at any time during a monthly period will be charged for that full monthly period and then for the following monthly periods that remain in the Subscription Term.

4.2 Invoicing and Payment. We will invoice the End-User in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due 30 days from the date specified on the invoice (“Invoice Date”). The End-User is responsible for providing and maintaining complete and accurate billing and contact information.

4.3 Overdue Charges. Any payment not received by the Invoice Date, after provision of written notice of such payment default and ten (10) business days to cure such default at Pagefreezer’s discretion will be subject to (a) accrued late interest at the rate of 1.5% of the outstanding

balance per month, or the maximum rate permitted by law (whichever is lower) from the date such payment was due until the date of payment and/or (b) a condition on future Subscription renewals and Order Forms on payment terms shorter than those specified in s4.2 (Invoicing and Payment).

4.4 Suspension of Service and Acceleration. If any amount owing by the End-User under this or any other Agreement for Services is 30 or more calendar days overdue, and after provision of written notice of such payment default and allowing ten (10) business days to cure such default Pagefreezer may, without limiting any other rights and remedies, accelerate any unpaid fee obligations under such Agreements so that all such obligations become immediately due and payable, and suspend any and all Services to the End-User until such amounts are paid in full.

4.5 Payment Disputes. Pagefreezer shall not exercise its rights under s4.3 (Overdue Charges) or 4.4 (Suspension of Service and Acceleration) if the applicable charges are under reasonable and good-faith dispute and the End-User is cooperating diligently to resolve the dispute.

4.6 Taxes. Unless otherwise stated, Subscription Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). The End-User is responsible for paying all Taxes associated with all purchases hereunder. If Pagefreezer has the legal obligation to pay or collect Taxes for which the End-User is responsible under this section, the appropriate amount shall be invoiced to and paid by the End-User, unless it provides Pagefreezer with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Pagefreezer is solely responsible for taxes assessable against it and based on its income, property and employees.

## **5 PROPRIETARY RIGHTS**

5.1 Pagefreezer Property.

5.1.1 Subject to the limited rights expressly granted under the Agreement, Pagefreezer retains all rights, title and interest in the Service, including but not limited to copyrights, copyrightable works, patents, patent rights, trademarks, trade names and trade secrets ("Intellectual Property Rights"). The Agreement does not convey any right, title or interest in, or constitute the sale of any right to the Service or any related software used as part of the performance of the Service.

5.1.2 The End-User shall not (i) permit any third party to access the Services except as explicitly permitted by this Agreement, create derivative works based on the Services; (ii) copy, frame or mirror any part or content of the Services, other than copying or framing on its own intranets or otherwise for its own internal business purposes; (iii) reverse engineer the Services; or (iv) access the Services in order to build a competitive product or service, or copy any features, functions or graphics of the Services.

5.2 End-User Property. The End-User retains all right, title and interest in any End-User Data that you upload or share through the Service. The Agreement does not convey any right, title or interest in, or constitute the sale of any right to End-User property, and the End-User represents and warrants that all consents, licenses and rights necessary to license its property are obtained prior to sharing any of its property with Pagefreezer. Pagefreezer shall not use or access End-User property except in connection with the Service and you hereby grant us a limited and revocable license to your property under all copyright, trademark, trade secret, patent, privacy and publicity rights and any other intellectual or industrial property rights you own or control to use, display, modify, record, translate, transmit or otherwise exploit in order to facilitate the provision of Service together with a non-exclusive right to End-User trademarks and logos for use strictly in Pagefreezer marketing and to promote that the End-User is using Pagefreezer Services. The End-User sends and shares its property at its own risk.

5.3 Suggestions. The End-User grants Pagefreezer a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by the End-User relating to the operation of the Services.

## **6 DATA PROTECTION & ACCEPTABLE USE**

6.1 Use of Pagefreezer Services is subject to the Privacy Policy which can be found here <https://www.pagefreezer.com/privacy-policy/>

6.2 Use of Pagefreezer Services is subject to the Acceptable Use Policy which can be found here <https://www.pagefreezer.com/acceptable-use/>

## **7 REPRESENTATIONS, WARRANTIES AND DISCLAIMERS**

7.1 Pagefreezer Representations. Pagefreezer shall make the Purchased Services available on a daily basis except in the event of planned downtime and any unforeseen software update requirements which will be notified to the End-User via the Knowledge Base. We will provide the Purchased Services only in accordance with Applicable Law and Regulation.

## 7.2 Pagefreezer Warranties

7.2.1 Pagefreezer represents, warrants and covenant that the Services (and any parts and materials thereof) will (i) be delivered by competent personnel in a professional and workmanlike manner, according to best practice industry standards; (ii) be of good material and workmanship; (iii) be sufficient and fit for purpose; (iv) be performed in compliance with the requirements of Applicable Law and Regulation; (v) do not infringe or misappropriate any United States or foreign patent, trademark, trade secret, copyright or any other proprietary, Intellectual Property, industrial property, or contract right held by any third party; (vi) will comply with all applicable foreign, federal, state or local statutes, laws and regulations governing advertising, data collection, privacy, security and other business practices; (vii) will not otherwise expose either party to criminal or civil liability, and (viii) materially conform with the specifications (if any) set forth in the description of the Services and be consistent with any samples of Services provided.

7.2.2 Pagefreezer represents, warrants, and covenant that: (i) performance under this Agreement shall at all times conform to prevailing professional and ethical standards; (ii) due care and commercially reasonable efforts shall be utilized in the performance of this Agreement; and (iii) we are under no obligation or restriction that would conflict with our provision of Services.

For any breach of either such warranty, Your exclusive remedy shall be as provided in s10.3 (Termination for Cause) and s10.4 (Refund or Payment upon Termination) below.

7.3 End-User Representations. The End-User represents and warrants that: (a) all necessary information is provided to us during your use of Purchased Services; (b) it has authority to provide such information to us; and (c) it has authorization to make payments using the payment details provided. The End-User agrees to provide us with documents to verify identity and personal or business details upon request. Any information that we collect from you is subject to the Pagefreezer Privacy Policy.

#### 7.4 End-User Warranties.

7.4.1 The End-User warrants that it owns the Website and Social Media registered for Services. By registering for Services, you warrant that you have the right to, and hereby grant, Pagefreezer permission to access your Websites or Social Media with Services, including, but not limited to, archiving your Website, sub-sites, Website pages and/or Social Media.

7.4.2 The End-User shall not (i) permit any third party to access the Services except as permitted in the Agreement, (ii) create derivative works based on the Services, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on End-User intranets or otherwise for the End-User's internal business purposes, (iv) reverse engineer the Services, or (v) access the Services in order to build a competitive product or service or to copy any features, functions or graphics of the Services.

7.5 Mutual Warranties. Each Party represents and warrants that (i) it has the legal power to enter into this Agreement, and (ii) will not intentionally transmit to the other party any Malicious Code. Each party will utilize reasonable efforts to detect and remove Malicious Code from any materials subject to this Agreement by using virus scanning or other similar tools and techniques.

7.6 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS.

### **8 MUTUAL INDEMNIFICATION**

8.1 Indemnification by Pagefreezer. Pagefreezer shall defend the End-User against any claim, demand, suit, or proceeding ("Claim") made or brought against them by any third party alleging that the use of the Services as permitted by the Agreement infringe or misappropriate the intellectual property rights of such third party, and shall indemnify the End-User for any damages finally awarded against, and for reasonable attorney's fees incurred by it in connection with any such Claim; provided, that the End-User (a) promptly provide Pagefreezer with written notice of the Claim; (b) give Pagefreezer sole control of the defense and settlement of the Claim (provided that we may not settle any Claim unless the settlement unconditionally releases you

of all liability); and (c) provide Pagefreezer all necessary and reasonable assistance, at Pagefreezer's expense.

8.2 Indemnification by the End-User. The End-User shall defend Pagefreezer against any Claim made or brought against them by a third party alleging that End-User Data, or the End-User's use of the Services in violation of this Agreement, infringe or misappropriate the intellectual property rights of such third party or violate Applicable Law and Regulation, and shall indemnify Pagefreezer for any damages finally awarded against, and for reasonable attorney's fees incurred by them in connection with any such Claim; provided, that Pagefreezer (a) promptly provide written notice of the Claim; (b) give sole control of the defense and settlement of the Claim (provided that you may not settle any Claim unless the settlement unconditionally releases Pagefreezer of all liability); and (c) provide the End-User with all necessary and reasonable assistance, at the End-User's expense.

## **9 LIMITATION OF LIABILITY**

9.1 Disclaimer. THE SERVICE IS PROVIDED TO THE END-USER "AS IS" AND PAGEFREEZER AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES AND ASSIGNS (COLLECTIVELY, THE "COMPANY PARTIES"), DISCLAIM ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR COMPLIANCE WITH LAWS WITHIN THE END-USER'S JURISDICTION. WITHOUT LIMITING THE FOREGOING, THE COMPANY PARTIES MAKE NO REPRESENTATION OR WARRANTY THAT USE OF THE SERVICE WILL NOT INFRINGE ANY COPYRIGHT, PATENT, TRADEMARK LAW OR OTHER RIGHTS HELD BY A THIRD PARTY. FURTHER AND WITHOUT LIMITING THE FOREGOING, THE COMPANY PARTIES MAKE NO REPRESENTATIONS OR WARRANTIES THAT THE SERVICE, SERVICES PERFORMED AND PRODUCTS PROVIDED BY THE COMPANY PARTIES OR OTHER THIRD PARTIES, WILL COMPLY WITH APPLICABLE LAWS WITHIN THE END-USER JURISDICTION, MEET END-USER REQUIREMENTS, NOT CAUSE DAMAGE TO THE END-USER, IT'S PROPERTY OR PROPERTY OF OTHERS, OR THAT OPERATION OF THE SERVICE WILL BE UNINTERRUPTED, CONTINUOUSLY AVAILABLE, ERROR FREE OR WILL NOT HARM YOUR COMPUTER OR MOBILE DEVICE OR RESULT IN LOST DATA. THE COMPANY PARTIES MAKE NO REPRESENTATIONS, WARRANTIES OR GUARANTEES REGARDING:

(A) SATISFACTION WITH THE SERVICES; (B) THAT THE SERVICES WILL ALWAYS BE AVAILABLE AND ERROR FREE; OR (C) THAT THE COMPANY WILL PROMPTLY RESPOND TO ANY INQUIRIES OR SUBMISSIONS. NO ORAL ADVICE OR WRITTEN INFORMATION PROVIDED BY THE COMPANY PARTIES WILL CREATE ANY WARRANTY AND YOU SHALL NOT RELY EXCLUSIVELY UPON SUCH ADVICE OR INFORMATION. YOU BEAR THE ENTIRE RISK AS TO THE PERFORMANCE, OPERATION AND QUALITY OF THE SERVICE.

9.2 Limitation of Liability. THE COMPANY PARTIES SHALL NOT BE LIABLE TO THE END-USER FOR ANY CLAIM, LOSS OR DAMAGE OF ANY KIND ARISING OUT OF OR IN CONNECTION TO THE SERVICE OR THIRD-PARTY SERVICES, INCLUDING WITHOUT LIMITATION DIRECT, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES. TO THE EXTENT THAT THE ABOVE LIMITATION OF LIABILITY IS NOT APPLICABLE IN YOUR JURISDICTION, ANY CLAIM THAT YOU MAY HAVE AGAINST THE COMPANY PARTIES MUST BE COMMENCED NO LATER THAN SIX (6) MONTHS AFTER THE DAY ON WHICH THE CLAIM IS DISCOVERED OR OUGHT TO HAVE BEEN DISCOVERED BY THE END-USER.

9.3 Maximum Aggregate Liability. THE MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE CONTRACT OR THE USER TERMS (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY END-USER HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING THE LAST EVENT GIVING RISE TO LIABILITY. THE FOREGOING WILL NOT LIMIT END-USER'S PAYMENT OBLIGATIONS UNDER s4 OF THESE TERMS AND CONDITIONS.

9.4 Additional Limits on Our Liability. We are not responsible for: the End-User's (i) Website or any Website pages or Social Media data being excluded from the Services due to the access limits placed on Website, sub-site, page, Social Media and/or End-User Data, (ii) any missing webpages or data in the Website archive if your Sitemap is not available or not updated with an accurate list of your Website URLs at least once per day, (iii) Website, any sub-site, page, Social Media and/or End-User Data excluded from the Services due to not being specified by the End-User as being in scope of Services, (iv) Website, any sub-site, page, Social Media and/or End-User Data excluded from the Services due to Internet and/or network problems, a server overload, availability, and/or accessibility problems, or due to any other technical problems that may affect availability and/or accessibility of the End-User Website, any sub-site, page, Social Media and/or End-User Data, (v) any negative effect on the End-User by the Pagefreezer Website being offline from time to time for maintenance, (vi) loss of End-User Data after the

termination of this Agreement where the End-User has failed to request an export of End-User Data from Pagefreezer systems within the data hold period specified in s10.5 (Return of Your Data), (vii) refusal for any court, law enforcement agency, or dispute resolution venue to accept or recognize for any purpose the data generated by the Services and (viii) limitations to collect certain data sets or messages from Social Media accounts due to limitations that Social Media providers put on their Social Media APIs to access such data sets or messages, or rate limitations imposed by Social Media vendors on their APIs.

9.5 End-User Waiver. The End-User hereby waives and shall not assert any claim, suit, demand, proceed or allegation of any nature whatsoever against the Company Parties (or any of their respective officers, directors, managers, employees or contractors) arising out of or in connection to the use of the Service and the Company Parties are not liable for any direct, special, indirect, incidental, exemplary, punitive, or consequential damages, or any other damages of any kind. Without limiting the foregoing, the Company Parties are not responsible for any damages caused by or resulting from your reliance on the Service, or that result from mistakes, errors, omissions, interruptions, deletion of files or email, defects, viruses, delays in operation or transmission or any failure of performance, whether or not resulting from acts of God, communications failure, theft, destruction or unauthorized access systems.

## **10 TERM AND TERMINATION**

10.1 Term of Agreement. This Agreement commences on the Effective Date of the Order Form and continues for the duration of the Subscription Term and any subsequent Renewal Term(s).

10.2 Renewal & Cancellation of Subscriptions. (i) The Subscription Term shall automatically renew for additional periods equal to the expiring Subscription Term or one (1) year whichever is shorter ("Renewal Term"), unless either party gives the other written notice of cancellation at least 30 calendar days before the end of the applicable Subscription Term; (ii) The per-unit pricing during any such Renewal Term shall be the same as that during the Subscription Term unless Pagefreezer have provided written notice of price amendments at least 30 days before the end of the Subscription Term, in which case any amendments to the pricing shall be effective at start of the Renewal Term and shall continue thereafter; and (iii) Any increase to pricing shall not exceed 10% over the pricing agreed for the Subscription Term except where the pricing was designated in the applicable Order Form as promotional or one-time.

10.3 Termination for Cause. Either Party may terminate this Agreement (i) upon 30 days written notice of a material breach if such breach remains uncured at the expiration of such period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

10.4 Refund or Payment upon Termination. (i) Upon cancellation of Services in the event of termination for convenience subject to 10.2(i) Pagefreezer shall not refund the End-User any prepaid fees covering the remainder of the Subscription Term or any current Renewal Term owing from the date of cancellation to the end of any such Subscription or Renewal Term ("Cancellation Date"); (ii) Upon Termination For Cause by Pagefreezer the End-User shall pay any unpaid fees covering the remainder of the Subscription Term or any relevant Renewal Term immediately from the date of notice of termination to the expected expiration date of any such Subscription or Renewal Term ("Termination Date"); (iii) In no event shall any cancellation or termination relieve the End-User of the obligation to pay any fees payable to Pagefreezer for the period prior to the Cancellation Date or Termination Date whichever should apply.

10.5 Return of Your Data. (i) Any request for return of End-User Data must be made no later than 30 calendar days after the Termination or Cancellation Date and shall be subject to applicable fees ("Data Export Fees"); (ii) Pagefreezer will make available to the End-User a downloadable file End-User Data in the native file formats along with attachments in their native formats; (iii) Return of Data shall be subject to Data Export Fees at the following rate: \$500.00 (five hundred United States Dollars) for the first 200GB (200 GigaBytes) and then \$50.00 (fifty United States Dollars) for every 10GB (10 GigaBytes) thereafter; (iv) If a request for return of data is not made within the 30 day period post either the Termination or Cancellation Date, Pagefreezer shall have no obligation to maintain or provide any End-User Data and may at our own discretion and when permitted by Applicable Law and Regulation, delete all End-User Data without notice or confirmation; (v) Should the End-User elect to purge all End-User Data and require confirmation or destruction on or before a specific date, Pagefreezer shall destroy the Data and provide the End-User with a Certificate of Destruction for a one-time fee of \$300.00 (three hundred United States Dollars).

10.6 Surviving Provisions. s4 (Fees and Payment for Purchased Services), s5 (Proprietary Rights), s7 (Representations, Warranties and Disclaimer), s8 (Mutual Indemnification), s9 (Limitation of Liability), s10.4 (Refund or Payment upon Termination), s10.5 (Return of Your Data) 11 (Notices), s12 (Governing Law and Jurisdiction) and s13 (General) shall survive any termination or expiration of this Agreement.

## **11 NOTICES**

All notices shall be in writing and shall be deemed to have been served and effective upon: (i) personal delivery; (ii) the second business day after mailing if by post; (iii) the second business day after sending by confirmed facsimile; (iv) the first business day after sending by email, provided email shall not be sufficient for notices subject to s 11.3 or any notice of Claim subject to s9 of these Terms and Conditions; (v) notices to the End-User shall be addressed to the system administrator designated by them for their relevant Account, and in the case of billing-related notices, to the relevant billing contact designated by the End-User.

## **12 GOVERNING LAW AND JURISDICTION**

12.1 General. This Agreement and the relationship between the Parties shall be governed by the laws of the State of the End-User's jurisdiction, excluding its conflicts of law provisions. The Parties agree to submit to the personal and exclusive jurisdiction of the courts located within the State of the End-User's jurisdiction, to resolve any dispute or claim arising from this Agreement.

12.2 Waiver of Jury Trial. Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

## **13 GENERAL PROVISIONS**

13.1 Export Compliance. Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports.

13.2 Relationship of the Parties. This Agreement will not be construed as creating a partnership, joint venture, or agency relationship or as granting a franchise. The Parties are performing their obligations under these Terms and Conditions as independent contractors. At no time will either Party have any right, power or authority to create any obligation or responsibility on behalf of the other Party.

13.3 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

13.4 Waiver and Cumulative Remedies. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated in these Terms and Conditions, the remedies provided under the Agreement are in addition to, and not exclusive of, any other remedies a Party may be entitled to seek at law or in equity.

13.5 Severability and Waiver. If any provision of the Agreement or Privacy Policy is held by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law with remaining provisions of the Agreement in full force and effect. No failure or delay by a party in exercising any right, power or remedy under the Agreement constitutes a waiver.

13.6 Assignment. Neither party may assign this Agreement or the rights granted hereunder without the prior written consent of the other, except that a party may assign this Agreement to any successor to the business of the party by merger, consolidation, or sale of assets or to any corporation controlling, controlled by, or under common control of the Party and provide Pagefreezer with reasonable notice of any such assignment.

13.7 Entire Agreement; Modification. (i) This Agreement shall constitute an Entire Agreement between the Parties and supersedes all prior agreements and/or representations between the Parties relating to the provision of Services. Both Parties acknowledge that they have had the opportunity to have this Agreement reviewed by competent counsel; (ii) Any change, modification or amendment to this Agreement must be in writing and signed by both parties in order to be effective. No terms, provisions, or conditions of any other document will have any effect on the obligations of the parties under or otherwise modify this Agreement; (iii) To the extent, if any, the Terms and Conditions conflict with any Order Form or any other of Pagefreezer document, the terms contained herein shall be controlling and any additional terms presented in any other documents shall be null and void; and (iv) To the extent, if any, these Terms and conditions conflict with any language contained in any exhibit of any other incorporated document, these Terms and Conditions shall prevail.

13.8 Changes or Updates To Terms and Conditions. Pagefreezer reserves the right to modify these Terms and Conditions at any time (each, an "Update") and shall inform you of each Update. After informing you of an Update, you are deemed to accept any Update by continuing to use the Service unless you cancel the Service. Unless otherwise stated, an Update is automatically effective 30 calendar days from the date of notification of such Update.

13.9 Force Majeure. No delay or default in performance of any obligation by either Party shall constitute a breach of this Agreement to the extent such default or delay is caused, directly or indirectly, by an event beyond the reasonable control of the party unable to perform, including fire, flood, earthquake, elements of nature, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, failure of the Internet or strikes, lockouts or labor difficulties ("Force Majeure Event"). The party affected by an event of Force Majeure Event, upon giving prompt notice to the other party, shall be excused from performance hereunder on a day to day basis to the extent of such prevention, restriction, or interference (and the other party shall likewise be excused from performance of its obligations on a day to day basis to the extent that such obligations relate to the performance so prevented, restricted, or interfered with); provided that the party so affected shall use commercially reasonable efforts to avoid or remove such cause of non-performance and to minimize the consequences thereof and both parties shall resume performance hereunder forthwith upon removal of such cause. However, if the period of nonperformance exceeds ten (10) business days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been affected may, by giving written notice, terminate this Agreement without cause and may be subject to refunds for prepaid, unused Services.

IN WITNESS whereof the Parties have entered into this Agreement on the day and year first above written.

SIGNED by: )  
 )  
..... (name) )  
 )  
..... (position) )  
 ) .....(signature)  
for and on behalf of )  
**Pagefreezer** )

DATE:

SIGNED by: )  
 )  
..... (name) )  
 )  
..... (position) )  
 ) .....(signature)  
for and on behalf of )  
**Granicus, Inc.** )

DATE: