

RESOLUTION 2019-Q

**A RESOLUTION OF THE TOWN OF EATONVILLE, WASHINGTON,
AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH
PAGEFREEZER FOR SOCIAL MEDIA RECORDS SERVICES**

WHEREAS, the Washington Public Records Act requires that government agencies preserve public records regardless of physical form to include digital records created through social media and the metadata behind the records; and

WHEREAS, maintaining digital social media records requires technology for storing and securing files, and using centralized data management systems and software to search and inventory records; and

WHEREAS, PageFreezer provides services to archive social media records and captures information in real time, of up to 5 social media accounts for \$99.00 per month, to ensure compliance with public records laws and social media retention requirements; now, therefore,

**THE TOWN COUNCIL OF THE TOWN OF EATONVILLE, WASHINGTON,
HEREBY RESOLVES AS FOLLOWS:**

THAT: The Mayor is authorized to execute on behalf of the Town the attached Account Order Form with PageFreezer.

PASSED by the Town Council of Town of Eatonville and attested by the Town Clerk in authentication of such passage this 24th day of June, 2019

Mike Schaub, Mayor

ATTEST:

Kathy Linnemeyer, Town Clerk

PageFreezer Order Form

Jun 07, 2019
 Quote: 814689422

Sales person: Peter Boulton
 Email: peter@pagefreezer.com

| Name | Price | QTY | Subtotal |
|--|----------|-----|------------|
| PageFreezer Public Records Compliance for Social Media Social Media Archiving for up to 5 social media accounts. Add-on accounts may be obtained at \$15/month each. Unlimited Records. Unlimited Storage. Includes continuous account monitoring and archiving at the API (Application Programming Interface) level and replay of archives on PageFreezer.com. Open Record compliant. 1 administrative accounts are included with the PageFreezer account. API access/capture to/from Facebook, Twitter, LinkedIn, Instagram, YouTube. | \$99.00 | 12 | \$1,188.00 |
| Configuration and Training Personalized assistance for set up, and configuration for the website and social media accounts for archiving; set-up user account access including user names and passwords; initial troubleshooting and quality assurance; administrative setup for capture engine; test captures; capture optimization; QA cycle - internal; QA cycle - with client; 1:1 training session and access to unlimited weekly free online training. | \$250.00 | 1 | \$250.00 |
| Helpdesk Standard Weekdays, 9am-5pm PST, excl. holidays, email, phone, web support, online ticket system, knowledge base, user documentation. | \$0.00 | 1 | \$0.00 |

Configuration and Training: \$250
Recurring: \$99 per month (billed annually)

Terms & Conditions

This is a quotation on the goods named, subject to the following conditions:

of Eatonville, WA - Social Media

- i) All prices in USD and excluding sales tax
- ii) PageFreezer Subscription Agreement (https://www.pagefreezer.com/pagefreezer_subscription_agreement_government/)
- iii) Payment per year up-front
- iv) **Recurring annually until cancellation**
- v) Cloud data storage in our SOC 1 & SOC 2 compliant datacenter in Seattle, WA.
- vi) This quote is valid till 28th June 2019



In WITNESS WHEREOF, I have signed this agreement effective as of the day and year upon completion of signing.

By: _____

Name: _____

Date: _____

Title: _____

PageFreezer Software, Inc.

By: _____

Name: Peter Callaghan

Date: _____

Title: Chief Revenue Officer



PageFreezer Subscription Agreement Government

Home (<https://www.pagefreezer.com/>) › PageFreezer Subscription Agreement Government

THIS SUBSCRIPTION AGREEMENT ("AGREEMENT") GOVERNS YOUR PURCHASE AND ONGOING USE OF PAGEFREEZER SERVICES.

BY ACCEPTING THIS AGREEMENT AND BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. 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, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

This Agreement was last updated on March 6th, 2019. It is effective between You and Us as of the date of You are accepting this Agreement.

1 DEFINITIONS

"Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"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.

"PageFreezer Services" means the web site and social media archiving services described in the User Guide.

"Order Form" means the ordering documents for purchases hereunder, including addenda thereto, that are entered into between You and Us from time to time. Order Forms shall be deemed incorporated herein by reference.

"Purchased Services" means Services that You or Your Affiliates purchase under an Order Form.

"Services" means the online, Web-based archival platform and customer support provided by Us for Your web sites and social media accounts via <http://www.PageFreezer.com> (<http://www.PageFreezer.com>) and/or other designated websites, the features and technical limitations of which are described in the User Guide.

"User Guide" means the online user guide for the Services, accessible via <http://support.PageFreezer.com> (<http://support.PageFreezer.com>), as updated from time to time. You acknowledge that You have had the opportunity to review the User Guide. The User Guide shall not alter, modify or amend this Agreement in any way. In the case of a conflict between the language of this Agreement and the language of the User Guide, the language found in this Agreement shall prevail.

"Web Sites" means world wide web sites which are registered to You or Your affiliates and which have been registered by You to use the Services and, for whom subscriptions to a Service have been purchased.

"Social Media" means social media network accounts, pages or profiles which are registered to You or Your affiliates and which have been registered by You to use the Services and, for whom 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

You according to the specifications outlined on <https://www.sitemaps.org/index.html> (<https://www.sitemaps.org/index.html>)

"We," "Us" or "Our" means PageFreezer Software, Inc., a Canadian corporation, the company described in Article 11 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction).

"You" or "Your" means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

"Your Data" means all electronic data or information archived for You by the Purchased Services.

2 PURCHASED SERVICES

2.1 Provision of Purchased Services.

We shall make the Purchased Services available to You pursuant to this Agreement and the relevant Order Forms during a subscription term. You agree that Your 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 Us 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 during the subscription term at the same pricing as that for the pre-existing subscriptions, prorated for the remainder of the subscription term in effect at the time the additional subscriptions are added, and (ii) the added subscriptions shall terminate on the same date as the pre-existing subscriptions. Subscriptions may be reassigned to a new Web Site or social media accounts replacing a former Web Site which no longer requires ongoing use of the Services.

3 USE OF THE SERVICES

3.1 Our Responsibilities.

We shall make the Purchased Services available on a daily basis for each Web Site, except for: planned downtime (of which We shall give at least 8 hours' notice via the Purchased Services. We will provide the Purchased Services only in accordance with applicable laws and government regulations.

3.2 PageFreezer Services.

If the Order Form indicates You have purchased the PageFreezer Services, We shall archive and time stamp the Web Site or Web Sites, or portions thereof, indicated in the Order Form at the frequency specified on the Order Form. As more fully described in the User Guide, the PageFreezer Services store and back-up the archived data at Our datacenter. During the period of Your subscription We will not override, change or destroy any archived copy except in connection with migrating the archive to another storage device and, then, only after a copy has been placed on the storage device to which the archive is being migrated.

3.3 Litigation Hold.

If you wish to place a litigation hold on some or all of Your data archived by Us, You shall send an email to support@pagefreezer.com identifying the pages and dates You would like Us to hold or give Us notice using the web form made available to You for that purpose on Our website. Within one (1) business day after receipt of Your request, We will confirm to You that we have received Your request by sending an email to the address We have on file for You. Within two (2) business days after Our receipt of Your 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 this has been done. Within three (3) business days after the receipt of Your 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 by updating the User Guide. Please consult the User Guide for any changes to these procedures.

3.4 Your Responsibilities.

You shall (i) be responsible for making each Web Site or Social Media available for archiving by Us, (ii) be solely responsible for the accuracy, quality, integrity and legality of Your Data and of the means by which You acquired Your Data, use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use, (iii) ensure that all Your Web Site pages or Social Media accessed by our Services are accessible from Internet without restrictions and that Our software and Services are granted access to all of Your Web Sites or Social Media, (iv) ensure that your Sitemap is updated at least once per day containing an accurate list of all web pages URLs in your Web Site, (v) specify Your Web Sites or Social Media to be within the scope of Our Services, ensure that Your Web Sites 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 Web Sites 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 User Guide and applicable laws and government regulations, (viii) request an export of Your data from Our servers after the termination of this Agreement within the time period specified in Section 9.5 (Return of Your Data) (there is a fee for the data export which will cover the courier costs for the disks to be shipped to You), and (ix) be responsible for verifying and ensuring that under applicable law the data generated by Our Services are admissible in court proceedings or any other legal proceedings that You may wish to utilize the data. You shall not store anything on Your Web Sites or Social Media that You register for Services that We cannot lawfully copy.

3.5 Usage Limitations.

Services may be subject to other limitations, such as, for example, limits on disk storage space and on the number of calls You are permitted to make against Our application programming interface. Any such limitations are specified in this Agreement and in the User Guide. The Services provide real-time information to enable You to monitor Your compliance with such limitations.

4 FEES AND PAYMENT FOR PURCHASED SERVICES

4.1 Fees.

You shall pay all fees specified in all Order Forms hereunder. Except as otherwise specified herein or in an Order Form, (i) fees are quoted and payable in United States dollars (ii) fees are based on Services purchased and not actual usage, (iii) payment obligations are non-cancelable and fees paid are non-refundable, and (iv) the number of Web Sites 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 subscription start date and each monthly anniversary thereof; therefore, fees for subscriptions added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the subscription term.

4.2 Invoicing and Payment.

We will invoice You in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice. You are responsible for maintaining complete and accurate billing and contact information in the Services.

4.3 Overdue Charges.

If any charges are not received from You by the due date, and after We have provided You with a written notice of such payment default and allowed You ten (10) business days to cure such default, then at Our discretion, (a) such charges may accrue 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 paid, and/or (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 4.2 (Invoicing and Payment).

4.4 Suspension of Service and Acceleration.

If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue, and after We have provided you with a written notice of such payment default and allowed you ten (10) business days to cure such default, We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full.

4.5 Payment Disputes

We shall not exercise Our rights under Section 4.3 (Overdue Charges) or 4.4 (Suspension of Service and Acceleration) if the applicable charges are under reasonable and good-faith dispute and You are cooperating diligently to resolve the dispute.

4.6 Taxes.

Unless otherwise stated, Our 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"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against it based on Our income, property and employees.

5 PROPRIETARY RIGHTS

5.1 Reservation of Rights.

Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

5.2 Restrictions.

You shall not (i) permit any third party to access the Services except as permitted herein or in an Order Form, 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 Your own intranets or otherwise for Your own internal business purposes, (iii) reverse engineer the Services, or (iv) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.

5.3 Ownership of Your Data.

As between Us and You, You exclusively own all rights, title and interest in and to all of Your Data.

5.4 Suggestions.

We shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You, relating to the operation of the Services.

6 WARRANTIES AND DISCLAIMERS

6.1 Our Warranties.

We represent, warrant 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 prevailing industry standards; (ii) be of good material and workmanship; (iii) be fit and sufficient for the purpose(s) for which they were purchased; (iv) be performed in compliance with the requirements of all applicable laws and regulations; (v) not and 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.

We represent, warrant, and covenant to You that: (i) Our 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 by Us in the performance of this Agreement; and (iii) We are under no obligation or restriction that would conflict with Our providing the Services.

For any breach of either such warranty, Your exclusive remedy shall be as provided in Section 9.3 (Termination for Cause) and Section 9.4 (Refund or Payment upon Termination) below.

6.2 Your Warranties.

You warrant that You own the Web Site and Social Media that You register for Services. By registering Your Web Sites or Social Media for Services, You warrant that You have the right to, and hereby grant, Us permission to access Your Web Sites or Social Media with Services, including, but not limited to, archiving Your Web Site, sub-sites, Web Site pages and/or Social Media.

6.3 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.

6.4 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 LAW.

7 MUTUAL INDEMNIFICATION

7.1 Indemnification by Us.

WE SHALL DEFEND YOU AGAINST ANY CLAIM, DEMAND, SUIT, OR PROCEEDING ("CLAIM") MADE OR BROUGHT AGAINST YOU BY A THIRD PARTY ALLEGING THAT THE USE OF THE SERVICES AS PERMITTED HEREUNDER INFRINGES OR MISAPPROPRIATES THE INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, AND SHALL INDEMNIFY YOU FOR ANY DAMAGES FINALLY AWARDED AGAINST, AND FOR REASONABLE ATTORNEY'S FEES INCURRED BY, YOU IN CONNECTION WITH ANY SUCH CLAIM; PROVIDED, THAT YOU (A) PROMPTLY GIVE US WRITTEN NOTICE OF THE CLAIM; (B) GIVE US 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 TO US ALL REASONABLE ASSISTANCE, AT OUR EXPENSE.

7.2 Indemnification by You.

TO THE EXTENT PERMITTED BY STATE LAW, YOU SHALL DEFEND US AGAINST ANY CLAIM MADE OR BROUGHT AGAINST US BY A THIRD PARTY ALLEGING THAT YOUR DATA, OR YOUR USE OF THE SERVICES IN VIOLATION OF THIS AGREEMENT, INFRINGES OR MISAPPROPRIATES THE INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY OR VIOLATES APPLICABLE LAW, AND SHALL INDEMNIFY US FOR ANY DAMAGES FINALLY AWARDED AGAINST, AND FOR REASONABLE ATTORNEY'S FEES INCURRED BY, US IN CONNECTION WITH ANY SUCH CLAIM; PROVIDED, THAT WE (A) PROMPTLY GIVE YOU WRITTEN NOTICE OF THE CLAIM; (B) GIVE YOU SOLE CONTROL OF THE DEFENSE AND SETTLEMENT OF THE CLAIM (PROVIDED THAT YOU MAY NOT SETTLE ANY CLAIM UNLESS THE SETTLEMENT UNCONDITIONALLY RELEASES US OF ALL LIABILITY); AND (C) PROVIDE TO YOU ALL REASONABLE ASSISTANCE, AT YOUR EXPENSE.

8 LIMITATION OF LIABILITY

8.1 Limitation of Liability.

IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER OR, WITH RESPECT TO ANY SINGLE INCIDENT, THE GREATER OF \$100,000 OR THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER ARTICLE 4 (FEES AND PAYMENT FOR PURCHASED SERVICES).

8.2 Exclusion of Consequential and Related Damages.

IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

8.3 Additional Limits on Our Liability.

We are not responsible for: (i) Your Web Site or any of Your Web Site pages or Social Media data being excluded from Our Services due to the access limits placed by You on Your Web Site, sub-site, page, Social Media and/or Your Data, (ii) Your Web Site, any sub-site, page, Social Media and/or Your Data excluded from Our Services due to not being specified by You as being in scope of Our Services, (iii) Your Web Site, any sub-site, page, Social Media and/or Your Data excluded from Our Services due to Internet or Your network problems, Your server overload, availability, and/or accessibility problems, or due to any other technical problems that may affect availability and/or accessibility of Your Web Site, any sub-site, page, Social Media and/or Your Data, (iv) any negative effect on You by Our Web Site being offline from time to time for maintenance, (v) loss of Your Data after the termination of this Agreement when You had failed to request an export of Your Data from Our systems within the data hold period specified in Section 9.5 (Return of Your Data), and (vi) refusal for any court, law enforcement agency, or dispute resolution venue to accept or recognize for any purpose the data generated by Our Services.

9 TERM AND TERMINATION

9.1 Term of Agreement.

This Agreement commences on the date You accept it and continues until all Your Services subscriptions granted in accordance with this Agreement have expired or been terminated.

9.2 Term of Purchased Subscriptions.

Services subscriptions purchased by You commence on the start date specified in the applicable Order Form and continue for the subscription term specified therein. Except as otherwise specified in the applicable Order Form, all subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per-unit pricing during any such renewal term shall be the same as that during the prior term unless We have given You written notice of a pricing increase at least 30 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter. Any such pricing increase shall not exceed 10% over the pricing for the relevant Services in the immediately prior subscription term, unless the pricing in such prior term was designated in the relevant Order Form as promotional or one-time.

9.3 Termination for Cause.

A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party 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.

9.4 Refund or Payment upon Termination.

Upon any termination, We shall refund You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by Us, You shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any fees payable to Us for the period prior to the effective date of termination.

9.5 Return of Your Data.

Upon request by You made within 30 days after the effective date of termination of a Purchased Services subscription and upon payment to Us of the applicable data export fees, We will make available to You for download a file of Your Data in the native file formats along with attachments in their native formats. At the end of the 30-day period, We shall have no obligation to maintain or provide any of Your Data and we may, unless legally prohibited and at our own discretion when permitted, delete all of Your Data in Our systems without notice or confirmation. If You elect to purge Your Data and require confirmation or destruction on, or before, a specific date, We will destroy the Data and provide You with a Certificate of Destruction for a one-time fee of \$300.00.

9.6 Surviving Provisions.

Articles 4 (Fees and Payment for Purchased Services), 5 (Proprietary Rights), 7 (Mutual Indemnification), 8 (Limitation of Liability), 10 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction) and 11 (General Provisions) and Sections 6.4 (Disclaimer), 9.4 (Refund or Payment upon Termination), 9.5 (Return of Your Data) shall survive any termination or expiration of this Agreement.

10 WHO YOU ARE CONTRACTING WITH, NOTICES, GOVERNING LAW AND JURISDICTION

10.1 General.

Any action whatsoever brought upon or relating to this Agreement shall be instituted and prosecuted in the state courts located the state You are domiciled, or the federal district court therefore, and each party waives the right to change the venue. The parties hereto further consent to accept service of process in any such action or proceeding by certified mail, return receipt requested.

10.2 Manner of Giving Notice.

Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Notices to You shall be addressed to the system administrator designated by You for Your relevant Services account, and in the case of billing-related notices, to the relevant billing contact designated by You.

10.3 Agreement to Governing Law and Venue.

Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

11 GENERAL PROVISIONS

11.1 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.

11.2 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 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.

11.3 No Third-Party Beneficiaries.

There are no third-party beneficiaries to this Agreement.

11.4 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 herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

11.5 Severability.

If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

11.6 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 with the party.

11.7 Entire Agreement; Modification.

This Agreement shall constitute the entire Agreement between the parties hereto and supersedes all prior agreements and/or representations between the parties relating to the subject matter hereof. The parties acknowledge and agree that they have not relied upon any representations not set forth herein in entering into this Agreement. Both parties have had the opportunity to have this Agreement reviewed by competent counsel. 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. To the extent, if any, the terms of this Agreement conflict with any Order Form or any other of Our documental, the terms contained herein shall be controlling and any additional terms presented in any of Our documents shall be null and void. To the extent, if any, the terms Sections 1 through 11 of this Agreement conflict with any language contained in any exhibit of other document incorporated herein, the terms contained in Sections 1 through 11 shall prevail. In the case of a conflict in language between this Agreement and any other agreement or other document between the parties, the language of this Agreement shall prevail.

11.8 Pre-Printed Terms or Conditions.

In no event shall the pre-printed terms or conditions in any Order Form or other document, or any other similar document, be considered an amendment or modification whether such terms conflict or not, with this Agreement, even if such documents are signed by representative of both parties. For further clarity, such terms shall be inapplicable and of no effect in their entirety.

11.9 Change In Document.

By signing and delivering this Agreement and/or any schedule, exhibit, amendment, or addendum thereto, each party will be deemed to represent to the other that the signing party has not made any changes to such document from the draft(s) most recently provided to the other party by the signing party, or vice versa, unless the signing party has expressly called such changes to the other party's attention in writing (e.g., by "redlining" the document or by a comment memo or email).

11.10 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 pre-paid, unused Services.

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