

TERMS AND CONDITIONS FOR THE USE OF PRESERVICA PROFESSIONAL CLOUD

1 Definitions.

1.1 The following definitions and rules of interpretation shall apply in the Agreement:

Acceptable Use Policy: Means the acceptable use policy, as set out and referenced in the section of these Terms entitled "Policies".

Additional Fees: The Fees payable for Additional Service by the Client as agreed in writing between the Client and Preservica.

Additional Services: Any additional services in relation to the Subscription Services including any training, implementation, installation, configuration, storage, escrow or professional services requirements as set out in an Order Form or Change Order.

Agreement: The agreement between Preservica and the Client in relation to the Subscription Services, Support Services, and any Additional Services, as set out in these Terms.

Annual Subscription Fees: The annual fees payable by the Client for the Subscription Services.

Audit: Refers to any formal or informal examination, inspection or verification of Client's or Preservica's specific records, accounts, finances, processes, policies or security information, excluding source code. This includes any attestation of compliance or other requirements to submit to the Client's third-party risk management processes.

Authorised Users: Employees, agents and independent contractors of the Client who are authorised by the Client to use the Subscription Services.

Payment Cycle: Refers to the billing arrangements as specified in the order form.

Business Day: Any day which is not a Saturday, Sunday, or public holiday in the United Kingdom.

Business Hours: 8.30 am to 5.30 pm UK time, each Business Day.

Change Order: Agreed changes of the Subscription Services or any Additional Services. This may take the form of an updated Order Form or similar authority from the customer, accompanied by the Client purchase order where applicable.

Client Administrator: The person named in the Order Form as the Client administrator, or any substitute appointed in accordance with these Terms.

Client Data: Includes all text, files, images, graphics, illustrations, information, data (including personal information or personal data), audio, video, photographs and any other content and materials, in any format, inputted, transmitted, distributed, accessed, stored or uploaded by or on behalf of the Client in connection with its use of the Subscription Services. Client Data should exclude any PCI-DSS data.

Client Default: Means any failure of the Client or its Authorised Users to comply with the requirements of these Terms or use of the Subscription Services or Policies.

Client: The legal entity identified in the Order Form.

Confidential Information: all non-public information disclosed by a Party to the other Party including any information that would be regarded as confidential by a reasonable person, which includes, trade secrets, know-how, formulae and processes, business affairs and plans, project and technology-related matters, design/performance specifications, operating procedures, systems documentation, data, algorithms, software and documentation, models, financial information, inventions, designs, contractual information, vendor information, customer information, Client Data and Fees.

Contract Term: Means the contract terms as outlined on the Order Form starting on the Start Date and terminating on the End Date inclusive.

Data Breach: the unauthorized access, disclosure, or acquisition of Client Data.

Documentation: Any materials that Preservica provides to the Client in connection with the Subscription Services.

Downgrade: The opposite of Upgrade.

Effective Date: The date which is specified in the Order Form and is the date of the Agreement between the Parties.

Escrow: The process of utilising a third-party to hold agreed material relating to the Services on behalf of the Parties involved to be used in the event of Preservica business failure.

Fees: The Annual Subscription Fees and any Additional Fees as set out in this or subsequent Order Forms.

Force Majeure Event: Means any circumstances beyond the reasonable control of the affected Party including: flood, fire, earthquake, other natural disasters or other acts of God; war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions; terrorist attack, civil war, civil commotion or riots, epidemic or pandemic; strikes, labour stoppages or slowdowns; and any relevant law or government order, rule, regulation or direction, or any action taken by a government or public authority, including imposing an embargo, export or import restrictions.

Format Conversion: transforming information held in one digital format into another digital format, noting such conversions have inherent limitations.

Freedom of Information Request (FOI Request): a formal application by a third-party to access specific documents or records held by a company or public authority, subject to certain exemptions for privacy and sensitive information.

GDPR Policy: Means the GDPR policy, as set out and referenced in the section of these Terms entitled "Policies".

Global Additional Services Policy: Means the global additional services policy, as set out and referenced in the section of these Terms entitled "Policies".

Indemnitee: The Party that is seeking indemnification from the other Party pursuant to the Indemnity clauses of this Agreement.

Indemnitor: The Party that is indemnifying the other Party pursuant to the Indemnity clauses of this Agreement.

Information Security Policy: means Preservica's policy setting out its information security measures and standards, as set out and referenced in the section of these Terms entitled "Policies".

Insolvency Event: An event whereby either Party is:

- a) the subject of a resolution, court order, application to court or notice filed at court in respect of its winding up or administration; or
- b) ceases to do business in the normal course; or
- c) suspends or threatens to suspend payment of its debts or is unable to pay its debts within the meaning of applicable insolvency Law; or
- d) enters into a composition, compromise or similar arrangement with its creditors; or
- e) is subject to the appointment of an administrator, liquidator or receiver; or
- f) is the subject of any similar or analogous event in applicable Law.

Intellectual Property Rights: All patents, copyrights, design rights, trademarks, software code and scripts, Documentation, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world whether or not now existing or applied for and all accrued rights of action in respect of any such rights.

Jurisdiction: means England and Wales.

Law: means all relevant laws (including common law), regulations and statutory provisions, and all mandatory or binding rules, requirements, orders, guidance, standards and directions imposed by any governmental or regulatory or judicial authority.

Losses: means all losses, claims, liabilities, costs (including reasonable legal costs), expenses and damages of any nature whatsoever and whether or not reasonably foreseeable or avoidable.

Order Form: Means the agreed Preservica order form specifying the Services to be provided, or an alternate order form as agreed by the Parties.

Person: includes an individual, company, partnership or other organisation.

Policies: collectively refers to the Acceptable Use Policy, the Information Security Policy, the Privacy Policy, the GDPR Policy and the Shared Responsibility Model.

Pornographic Material: Means content primarily intended to elicit sexual arousal, typically featuring explicit sexual acts or imagery presented in a gratuitous, explicit, or commercialized manner. This does not include content containing nudity or sexual themes when presented in a legitimate artistic, educational, cultural, or theatrical context such as fine art, academic materials, or dramatic performances, where the intent is not primarily sexual. The context, intent, and presentation will guide the classification of content under this definition.

Preservica: Preservica Limited, incorporated in England and Wales with the company registration number 07998621.

Prohibited Content: Any Client Data that does not comply with Law, contains Pornographic Material, offensive, prurient or illegal data, or any data contrary to a court order or is likely to have an adverse effect on Preservica or other users of the Subscription Services. Prohibited Content includes the public display of content that is classified under the UK Online Safety Act or similar legislation.

Prohibited Content: Any Client Data that does not comply with Law, contains prohibitive, offensive, illegal data or any data contrary to a court order or is likely to have an adverse effect

on Preservica or other users of the Subscription Services.

Security Breach: Refers to any incident that compromises the integrity or confidentiality of the Client Data or Subscription Service.

Server Location: Means the location of the server as detailed in the Order Form.

Services: Includes Subscription Services, Support Services and Additional Services.

Service Outputs: Includes any output, results, or deliverables generated by the Service that are based on or derived from the Client Data.

Shared Responsibility Model: Means the shared responsibility model as set out and references in the section of these Terms entitled "Policies".

Software: The software provided or hosted by Preservica as part of the Subscription Services.

Storage Allowance: The storage requirements and allowances in Terabytes (TB) as agreed to in the Order Form and any Change Orders.

Subscription Services: The services and access to the Software, any scripts and / or integrations provided by Preservica to the Client under this agreement as set out in the Order Form, Documentation, or Support Services or Additional Services.

Support Services: The support services and support level agreement (SLA) as outlined in Schedule 1.

Terms: The terms and conditions in this Agreement including the schedules and Policies.

Upgrade: A change to this Agreement whereby the Subscription Services are enhanced, Storage Allowance increases or any other increase to Additional Services that results in additional Annual Subscription Fees.

Virus: Anything or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Website: Preservica's website at www.preservica.com or any other website notified by Preservica to the Client in connection with the Subscription Services.

1.2 Words in the singular shall include the plural and vice versa.

1.3 References to "including" or "includes" shall be deemed to have the words "without limitation" inserted after them.

1.4 A reference to a statute or statutory provision is a reference to it as it is amended from time to time and to any subordinate legislation made under it.

1.5 A reference to writing or written includes e-mail.

1.6 The terms "personal data", "data processor", "data controller" and "process" shall have the meanings assigned to them in the applicable data protection Laws.

1.7 Unless otherwise stated, a reference in these Terms to the Documentation or any Policy is to the Documentation or Policy as amended from time to time in accordance with these Terms.

2 Right of Use.

2.1 Subject to the Client paying all Fees due under this Agreement, Preservica grants Client non-exclusive, non-transferable right to permit the Client and its Authorised Users to use the Services and Documentation in accordance with the Terms of this Agreement.

2.2 The rights provided under this clause are granted to the Client only, and shall not be considered granted to any subsidiary, holding company or any other entity within the Client's group unless otherwise specifically permitted or granted under these Terms.

2.3 Preservica and the Client agree to share responsibilities for the Subscription Service as outlined in the Shared Responsibility Model.

2.4 No other rights are granted to the Client unless expressly outlined in this Agreement.

3 Preservica's Obligations and Warranties.

3.1 Preservica shall comply with all Laws applicable to its performance of the Services pursuant to this Agreement.

3.2 The Client acknowledges and agrees that:

3.2.1 Preservica shall use commercially reasonable efforts to provide the Services and does not warrant: (i) that use of the Services will be uninterrupted or error-free; (ii) that the Services and / or the information obtained through the Services will meet the Client's requirements; (iii) the Services will be free from Viruses; and

3.2.2 Preservica is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the Internet, and the Client acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

3.3 In the event of a confirmed Data Breach, Preservica commits to: (i) promptly inform the Client within 48 hours including any relevant details, where legally permitted; (ii) manage, in consultation with Preservica's advisors, the incident through to resolution; and (iii) provide the Client with regular updates.

3.4 Preservica warrants that:

3.4.1 it shall provide the Services, including initial configuration as specified on the Order Form from the Start Date subject to reasonable installation and configuration lead times; and

3.4.2 it shall provide access to the Services upon installation to the Client Administrator, and subsequently to its Authorised Users; and

3.4.3 the Services will be provided with reasonable skill and care and will materially comply with the terms of this Agreement, including the Policies and all applicable Documentation; and

3.4.4 it will implement and maintain reasonable technical and organizational measures to protect the security and confidentiality of Client Data in line with industry standards as specified in the Information Security Policy; and

3.4.5 it has the legal entitlements to provide the Services, and it shall maintain all necessary licenses, consents, and permissions necessary for the performance of its obligations under the Agreement.

3.5 Upon notification of a breach of warranty under this section by the Client, Preservica shall at its discretion:

3.5.1 use reasonable commercial endeavours to correct any such non-conformance promptly so that the Service materially complies with the Documentation; or

3.5.2 provide the Client with a replacement Service with substantially equivalent functionality, or an alternative means of accomplishing the desired outcome.; or

3.6 Where Preservica is not able to correct such non-conformance or provide a suitable replacement Service, Client shall be entitled to terminate the Agreement and refund a pro-rata portion of the prepaid Subscription Fee based on the number of months remaining in the Initial Term or Renewal Term as of the date that Client provided written notice of the warranty claim.

3.7 Nothing shall prevent Preservica from providing the Services to any third-party.

3.8 A failure by Preservica to perform any of its obligations under this Agreement shall not constitute a breach of this Agreement to the extent that such failure arises from a Client Default.

4 Client's Obligations.

4.1 The Client shall comply with all Laws applicable to it in connection with its performance of its obligations under this Agreement.

4.2 The Client undertakes that it and its Authorised Users shall not, except to the extent expressly permitted under this Agreement:

4.2.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software or the Documentation in any form or media or by any means; nor

4.2.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; nor

4.2.3 use the Services or the Documentation to provide or sell services to third-parties; nor

4.2.4 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services or the Documentation available to any legal entity not named on this Agreement for any monetary value; nor

4.2.5 use or share access of all or any part of the Services with any other party that builds or provides a product or service which competes with the Services; nor

4.2.6 access without authority, interfere with, manipulate, damage or disrupt all or any part of the Services or any equipment or network owned or used by any third-party, or assist any third-party in doing such acts; nor

4.2.7 access, store, distribute or transmit any Viruses or Prohibited Content during the course of its use of the Services; nor

4.2.8 infringe any Intellectual Property Rights through its use of the Services; nor

4.2.9 access any data that that does not belong to the Client; nor

4.2.10 perform any actions including probe, scan, monitor, performance benchmark or test the Services that in any way that may disrupt, degrade or disable the Services without the prior written consent from Preservica.

- 4.3 The Client undertakes that it shall:
- 4.3.1 provide Preservica with all necessary co-operation and access to information and Client Data as Preservica requires to perform the Services; and
 - 4.3.2 be responsible for Authorised Users compliance with Preservica's Acceptable Use Policy; and
 - 4.3.3 ensure that Authorised Users be named individuals and their passwords be kept secure and confidential; and
 - 4.3.4 ensure its networks, internet connectivity, telecommunication links and systems are suitable for the effective use of the Services; and
 - 4.3.5 maintain all necessary licenses, consents, and permissions necessary for it to use the Services and provide the Client Data to Preservica, including such licenses consents and permissions that are necessary for Preservica to process the Client Data in its performance of the Services; and
 - 4.3.6 respond to requests for information in a reasonable time for Preservica to provide the Services.
- 4.4 The Client accepts that Preservica cannot be held responsible for a breach of the Services where the breach originated through fault of the Client or Clients Authorised Users.
- 5 Client Data.**
- 5.1 The Client: (i) warrants that it owns, is a licensee of or has the legal right to use, all rights, title and interest in and to all of the Client Data; and (ii) shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Data.
 - 5.2 Preservica shall in providing the Services act as:
 - 5.2.1 a controller of any personal data it uses for the purpose of: (i) managing the Parties' commercial relationship; (ii) monitoring Client Data in accordance with clause 5.5; or (iii) monitoring, reviewing, improving and developing its performance, products and Services under the Agreement and it shall process such personal data in accordance with the Privacy Policy; and
 - 5.2.2 a processor with respect to any other processing of personal data, including Client Data, and the GDPR Policy shall apply to such processing.
 - 5.3 The Parties agree to comply with their respective obligations in the GDPR Policy.
 - 5.4 The Client Data shall be located within the region specified on the Order Form under Data Residency.
 - 5.5 Preservica shall be entitled, but not obliged, to monitor the Client Data. Where Preservica becomes aware of any Prohibited Content or is served by a court order or legal notification with respect to any prohibitive, offensive or illegal Client Data, Preservica shall where legally permitted to do so request the Client to immediately review the affected Client Data and to remove and/ or prevent public access to any such Client Data and to comply with any Law, court or legal order.
 - 5.6 Should the Client fail to act within 72 hours' notice period from Preservica, then Preservica reserves the right to: (i) suspend the Client's access to the Subscription Services; and / or (ii) delete any Prohibited Content. Preservica shall have no liability for the deletion of Client Data classified as Prohibited Content under this clause.
 - 5.7 Where Preservica is not legally permitted to provide such prior notice to the Client, Preservica reserves the right to: (i) suspend the Client's access to the Subscription Services; and / or (ii) delete any Prohibited Content; and (iii) shall, to the extent permitted by Law, subsequently notify the Client of any actions taken and provide the reasons and information of any court order or legal notification. Preservica shall have no liability for the deletion of Client Data classified as Prohibited Content under this clause.
- 6 Suspension of Services.**
- 6.1 Preservica reserves the right to suspend the Client or its Authorised Users right to access or use the Subscription Services with 30 days prior notice and where the Client has not taken remedial action within this notice period in the event of: (i) late payment; or (ii) failure to remediate any excess to the agreed Storage Allowance; or (iii) the Client's breach of these Terms (including where the Client misuses the Services as set out in this Agreement).
 - 6.2 Preservica reserves the right to immediately suspend the Client or its Authorised Users access to the Subscription Services without prior notice: (i) in the event Preservica incurs liability to a third-party that is outside of the normal Services as a result of the Client's actions; or (ii) if it poses a security risk to the Services; or (iii) if the Client's use of the Services contravenes any Law; or (iv) the Client undergoes an Insolvency Event.
 - 6.3 The Client shall remain liable for all Fees payable in respect of any period during which the Subscription Services are suspended as a result of Client Default.
 - 6.4 Any suspension of the Subscription Services by Preservica shall, where feasible, be kept to the shortest reasonable timeframe.
- 7 Charges and Payment.**
- 7.1 Preservica shall invoice the Client the Fees in accordance with the Payment Cycles as specified in the Order Form.
 - 7.2 Payment of the Fees is due within 30 days of the invoice date.
 - 7.3 The Client shall make all payments under the Agreement without set off, deduction or withholding of any taxes or other amounts.
 - 7.4 In the event of an invoice dispute, both Parties commit to good faith negotiations. The disputing Party shall provide written notice, detailing the dispute and desired resolution.
 - 7.5 If the Client fails to make payment on the due date, Preservica reserves the right to charge interest on overdue amounts at an annual rate equal to the then current base lending rate of the Bank of England.
 - 7.6 Preservica reserves the right to charge additional storage fees where the Client exceeds the contractually agreed storage limits specified in the Order Form.
 - 7.7 All amounts and fees stated or referred to in the Agreement are in the currency as outlined on the Order Form and are exclusive of value added tax and any other applicable sales or use taxes, which shall be added to Preservica's invoice where applicable.
 - 7.8 Where the Client has requirements outside of the normal Services that would incur a third-party fee obligation on Preservica, the Parties shall in good faith agree a suitable fee.
- 8 Audits.**
- 8.1 Preservica reserves the right to Audit the Client's use of Subscription Services and Additional Services to establish the Client's compliance with these Terms, provided that such Audits shall be conducted on reasonable notice and so as to cause as little disruption to the Client's use of the Subscription Services as is reasonably practicable, and:
 - 8.1.1 such Audits may be conducted no more than once per year unless Preservica has reasonable grounds to suspect that the Client is in breach of these Terms, in which case they can be conducted at such intervals as is reasonably required by Preservica; and
 - 8.1.2 in the event any Audit identifies non-compliance with these Terms, the Client shall be obliged to remediate all non-compliances.
 - 8.2 The Client may conduct an Audit of Preservica in order to establish or confirm Preservica's compliance with this Agreement, provided that any such Audits:
 - 8.2.1 may be conducted no more than once per year; and
 - 8.2.2 shall be subject to the Client providing at least 30 days prior written notice; and
 - 8.2.3 shall be subject to a fee of £2,500 per day.
- 9 Changes and Change Orders.**
- 9.1 No variation of the Agreement or any Change Order will be effective unless it is in writing and signed by the Parties or their authorized representatives.
 - 9.2 The Client:
 - 9.2.1 may Upgrade its Services during the Contract Term which shall take effect from the date of the Change Order; and
 - 9.2.2 can only Downgrade at the end of the Contract Term; and
 - 9.2.3 must, within 30 days of receiving notification from Preservica that their storage using the Services is in excess of their contractual Storage Allowance, either remove the excess data or sign a Change Order to increase their Storage Allowance.
 - 9.3 The Annual Subscription Fees will be automatically increased or reduced to take account of any Change Order, such increases, or reductions, apply from the date on which the Change Order takes effect under these Terms.
 - 9.4 Preservica shall be entitled to make changes to the Documentation, Policies and Services at any time without notice. Where feasible, reasonable written notice will be provided to the Client for changes that:
 - 9.4.1 are made in order to comply with or reflect applicable Law; or
 - 9.4.2 are reasonably likely to have any adverse effect on the Client or its use of the Subscription Services; or
 - 9.4.3 require action from the Client to ensure the continued secure operation of the Services.
 - 9.5 Where revisions are required due to any Law changes, the Parties shall in good faith negotiations, increase the Fees where the Law change requires Preservica to amend the Subscription Services.

10 Proprietary Rights.

- 10.1 The Client acknowledges and agrees that Preservica owns all Intellectual Property Rights in the Services, Documentation and training materials.
- 10.2 Preservica shall own the Intellectual Property Rights in any communicated suggested improvements originating from Client or its Authorised Users ideas, requests or suggestions to the extent incorporated in the Services. Any ideas, requests or suggestions made by the Client or its Authorised Users are accepted by Preservica to be without warranty of completeness, accuracy, or commercial viability.
- 10.3 The Client acknowledges and agrees that any unauthorised use, reproduction, distribution, or disclosure of the Preservica's Intellectual Property Rights, including but not limited to software, trademarks, service marks, trade secrets, patents, and copyrighted materials, will cause irreparable harm to Preservica for which monetary damages would be inadequate. In the event of such a breach or threatened breach by the Client, Preservica shall be entitled to seek injunctive relief without the necessity of posting a bond or other security, in addition to any other rights or remedies available to Preservica at law or in equity. The Client further agrees that Preservica shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred in connection with enforcing its rights under this clause.
- 10.4 The Client shall have a worldwide, irrevocable, perpetual right to own and use the Service Outputs. The Client retains all rights, title, and interest in and to the Service Outputs. The Client is free to use, reproduce, modify, distribute, and disclose the Service Outputs for any purpose without restriction. To the extent that any Service Outputs incorporate the Supplier's Intellectual Property Rights, Preservica grants the Client a non-exclusive, royalty-free, worldwide, irrevocable, and perpetual license to use such Intellectual Property Rights solely as incorporated in the Service Outputs. This license does not grant the Client any rights to use Preservica's Intellectual Property Rights independently of the Service Outputs.

11 Confidentiality and Publicity.

- 11.1 Each Party undertakes to keep confidential and not to disclose to any third-party, save as may be required in law, court order, insurance policy, Audit requirement and during any litigation discovery, all Confidential Information including the nature, content or existence of this Agreement and any and all Confidential Information given by a Party to the other Party pursuant to this Agreement.
- 11.2 Each Party may publicly identify the other Party as a user or provider of the Subscription Services.
- 11.3 Where the Client is subject to freedom of information Laws the parties agree that:
 - 11.3.1 the Client is solely responsible for complying with FOI Requests related to Client Data in the Service. This includes responding to requests and ensuring disclosures comply with applicable Laws.
 - 11.3.2 Preservica will assist the Client with FOI Requests as needed, upon the Client's prompt written request.
 - 11.3.3 Preservica will keep FOI Requests confidential and will not disclose any Client Data unless required by Law or with the Client's written consent.
 - 11.3.4 both the Client and Preservica will handle FOI Requests in compliance with applicable data protection and privacy Laws.
 - 11.3.5 if Preservica receives a FOI Request relating to Client Data, Preservica shall forward such request to the Client promptly, and within 10 working days where possible.

12 Indemnity.

- 12.1 Preservica shall defend, indemnify, and hold harmless the Client, its officers, directors, employees and agents from and against all actions, proceedings and Losses against the Client, arising out of any third-party claim that the Services or Documentation infringes a third-parties Intellectual Property Rights.
- 12.2 The Client shall defend, indemnify, and hold harmless Preservica, its officers, directors, employees, agents, licensors and suppliers from and against all actions, proceeding sand Losses, arising out of any third-party claim that the Client Data infringes a third-parties Intellectual Property Rights or contains Prohibited Content.
- 12.3 Should either Party become aware of any incident, any fact, circumstance, or situation which may reasonably give rise to a claim under the above Indemnities:
 - 12.3.1 each Party will as soon as practically possible, notify the other Party of any claim or potential claim, regardless of if such claim is groundless, false or fraudulent;
 - 12.3.2 the Indemnitee shall cooperate with the Indemnitor (and its professional advisers) at the Indemnitor's sole cost and expense;
 - 12.3.3 the Indemnitor shall promptly assume sole control of the defence of the claim;
 - 12.3.4 the Indemnitee shall not make any offer, promise, compromise, settlement or communication adverse to the defence of the claim with the third party claimant without the prior written consent of the Indemnitor;
 - 12.3.5 the Indemnitor shall not enter into any settlement or make any admission in respect of a claim, nor do (or permit anything to be done) in the control or conduct of the claim, which is reasonably likely to damage the reputation or standing of the Indemnitee without the Indemnitee's consent (not to be unreasonably withheld or delayed);
 - 12.3.6 the Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing;
 - 12.3.7 the Indemnitee's failure to perform any obligations under this section will not relieve the Indemnitor of its indemnification obligations, except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced because of such failure;
 - 12.3.8 where the Indemnitor does not reasonably and diligently defend the claim, the Indemnitee may by written notice to the Indemnitor take over the control and conduct of the claim, in which case the Indemnitee shall: (i) consult with the Indemnitor in relation to the handling of such claim; and (ii) provide the Indemnitor with such information, co-operation and assistance as the Indemnitor may reasonably require; and
 - 12.3.9 each Party shall provide the other Party with reasonable updates on the progress of any claim.
- 12.4 Preservica, its officers, directors, employees, agents, licensors and suppliers shall not be liable to the Client in respect of any claim to the extent that the alleged infringement is based on any Client Default.
- 12.5 When notified of any alleged or actual infringement, both Parties shall take all reasonable actions to limit further liability.

13 Limitation of Liability.

- 13.1 This clause sets out the entire financial liability of Preservica (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in connection with the Services and the Documentation.
- 13.2 Preservica shall have no liability under this Agreement:
 - 13.2.1 for conclusions drawn by the Client from the use of the Services, including any artificial intelligence or machine learning technologies, or any damage caused by errors or omissions from any information or instructions provided to Preservica by the Client in connection with the Subscription Services, or any actions taken by Preservica at the Client's direction; and / or
 - 13.2.2 where there is a Client Default.
- 13.3 Subject to the other provisions of this section (Limitation of Liability), Preservica's total aggregate liability under this Agreement for all Losses (whether for breach of contract, tort (including negligence), breach of statutory duty or otherwise) arising from or in connection with Security Breaches or Client Data Breaches, including for direct, indirect or incidental losses or damages, where the breach is solely due to Preservica, shall be limited to the higher of, as of at the date of any claim:
 - 13.3.1 £100,000 (one hundred thousand); or
 - 13.3.2 2 times the Annual Subscription Fee payable by the Client; or
 - 13.3.3 the total Fees paid by the Client over the preceding 2 years.
- 13.4 Unless otherwise specified in this Agreement the following limits of liability apply to all Services provided by Preservica:
 - 13.4.1 neither Party shall limit liability in respect of fraud or fraudulent acts, wilful misconduct, death, personal injury, or the indemnities stated above in these Terms; and
 - 13.4.2 both Parties accept that no limit of liability shall apply to the Indemnities; and
 - 13.4.3 neither Party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise and regardless of the theory of liability for any loss of revenue or profits, loss of business, depletion of goodwill and / or similar losses or loss or corruption of data or information, or pure economic loss or for any special, incidental, indirect, business interruption, punitive, cover damages, or consequential loss, costs, damages, charges or expenses, howsoever arising; and
 - 13.4.4 Preservica shall not be liable for any direct, indirect, incidental, special, or consequential damages arising out of the use of escrow services provided by the third-party escrow agent; and
 - 13.4.5 subject to the above provisions of this section (Limitation of Liability), Preservica's total aggregate liability to the Client for any other matter in connection with the Services (whether arising in tort (including negligence), contract or otherwise) shall be limited to the amount of Fees paid or payable by the Client during the 12 months immediately preceding the date on which the claim arose.

14 Term and Termination.

- 14.1 The Agreement shall commence on the Effective Date and shall continue for the Contract Term.
- 14.2 Unless terminated by either Party on not less than 30 days written notice to the other, the Agreement shall automatically renew at the end of the Contract Term for an additional one-year Contract Term, unless otherwise agreed by the Parties.
- 14.3 Either Party may terminate this Agreement: (i) immediately, on written notice to the other Party, if the other Party is subject to an Insolvency Event; or (ii) without prejudice to each right or remedy of a non-breaching Party, for material breach by written notice, effective 30 days after notice unless the other Party cures the breach within the 30 days' notice.
- 14.4 Preservica may terminate this Agreement on providing 30 days' notice if it is entitled to suspend the Services and the reasons for the suspension are not remedied by the Client.

15 Consequences of Termination.

- 15.1 On termination of the Agreement for any reason:
- 15.1.1 the provision and receipt of the Services will cease; and
 - 15.1.2 all licenses granted under the Agreement shall immediately terminate; and
 - 15.1.3 each Party shall return and make no further use of any equipment, property, documentation, Confidential Information and other items (and all copies of them) belonging to the other Party; and
 - 15.1.4 the Client shall promptly pay all outstanding Fees and other amounts payable by the Client under this Agreement to the end of the Contract Term.
- 15.2 The Client shall be entitled to receive a pro rata refund of any Fees paid in advance and applicable to periods of time after the date of termination where: (i) Preservica is in breach of this Agreement; or (ii) Preservica suffers and Insolvency Event; or (iii) Preservica suffers a Force Majeure Event in line with the terms outlined in this Agreement.
- 15.3 For the avoidance of doubt, the Client will not, in any other circumstances, be entitled to a refund of the Fees.
- 15.4 The provisions relating to Confidential Information and Confidentiality requirements, Proprietary Rights, Consequence of Termination, Governing Law and Jurisdiction, claims, Limitation of Liability, Indemnities, Definitions and rules of Interpretation and Charges and Payments shall survive any termination.
- 15.5 The Client including its Authorised Users shall be able, for up to 30 days post termination, to export or copy their Client Data. Should the Client require any additional time beyond this 30-day period, the Client shall pay per month, in advance, a monthly fee for any extended period equal to the Annual Subscription Fee divided by twelve for any period of extension.
- 15.6 Preservica shall, without liability, be entitled to delete all Client Data and terminate all Services 30 days after the later of the termination date or any agreed paid for extended period.

16 Force Majeure.

- 16.1 Where a Force Majeure Event endures for more than 30 days, Preservica will use all reasonable commercial efforts to mitigate the impact of the Force Majeure Event and find alternative solutions to continue its obligations under this Agreement, and if the Subscription Services cannot be restored and remain unavailable, either Party may then terminate the contract in writing to the other Party and neither Party shall be liable to the other for any delay or non-performance of its obligations under these Terms.

17 Import and Export Compliance.

- 17.1 In connection with the Agreement, each Party will comply with all applicable import, re-import, export, and re-export control Laws. The Client is solely responsible for compliance with Laws related to the manner in which it chooses to use the Services, including the Client Data.

18 Insurance.

- 18.1 Preservica shall maintain, during the Contract Term, insurance cover which shall include the following policies or materially similar equivalents:
- 18.1.1 Employers Liability Insurance of £10m any one occurrence; and
 - 18.1.2 Public and Product Liability of £2m any one occurrence and in the aggregate; and
 - 18.1.3 Professional Indemnity including cyber cover of £5m for any one occurrence and in the aggregate including costs.
- 18.2 Preservica shall provide the Client certificates of insurance upon request.

19 Policies.

- 19.1 The Parties hereby undertake to comply with the provisions of the following policies.
- 19.1.1 **Acceptable Use Policy.** <https://website-assets.preservica.com/production/resources/Global-Acceptable-Use-Policy-v8.3.pdf>
 - 19.1.2 **Preservica's Information Security Policy.** <https://preservica.com/security>
 - 19.1.3 **Shared Responsibility Model.** <https://website-assets.preservica.com/production/resources/Global-Shared-Responsibility-Model-v1.2.pdf>
 - 19.1.4 **Global Additional Services Policy.** <https://website-assets.preservica.com/production/resources/Global-Additional-Services-Policy-v8.3.pdf>
 - 19.1.5 **GDPR Policy.** <https://website-assets.preservica.com/production/resources/GDPR-Data-Policy.pdf>
 - 19.1.6 **Privacy Policy.** <https://preservica.com/privacy-notice>

20 Miscellaneous.

- 20.1 **Precedence.** The following order of precedence shall be, in order; the Terms, the Order Form, the Schedules, the Policies in the order as listed.
- 20.2 **Assignment.** Neither Party shall, without the prior written consent of the other Party, whose consent shall not be unreasonably withheld or delayed, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement. Such assignment may require good faith discussions between the Parties on any operation and / or Fee implications. This excludes Preservica group company assignments.
- 20.3 **Waiver.** A waiver of any right under the Agreement is only effective if it is in writing and it applies only to the Party to whom the waiver is addressed and to the circumstances for which it is given.
- 20.4 **Severance.** If any provisions of this Agreement are held to be unenforceable by any Law, the Parties agree to negotiate in good faith to replace any such invalid or unenforceable provision with a valid and enforceable provision that achieves, to the greatest extent possible, the intended economic, legal, and commercial result of the severed provision. If the Parties cannot agree on a legally enforceable provision, the unenforceable provision shall be severed from this Agreement and shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect. Neither Party in this Agreement has sole control over any particular rights, abilities, or solutions outlined in the Agreement. Both Parties have access to all the rights, powers, and remedies available to them under the terms of the Agreement.
- 20.5 **Entire Agreement.** This Agreement constitutes the entire understanding and arrangement between the Parties and supersedes all prior agreements, arrangements, and understandings, whether written, oral, or otherwise communicated. Both Parties agree that any additional terms and conditions that may be provided by either Party, including terms contained within Client purchase orders, shall not be applicable unless explicitly included in this Agreement or through an amendment to this Agreement signed by both Parties. The persons executing and delivering this Agreement on behalf of each of the Parties represent and warrant that each of them is duly authorised to do so and that the execution of this Agreement is the lawful and voluntary act of such Party.
- 20.6 **No Partnership of Agency.** Nothing in the Agreement is intended to or shall operate to create a partnership between the Parties, or authorise either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 20.7 **Third Party Rights.** Both Parties agree that the Agreement does not confer any rights on any Person or Party (other than the Parties to the Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 20.8 **Escrow.** Where included in the Order Form: (i) escrow services will be provided by a third-party escrow agent; and (ii) escrow services will be subject to additional fees; and (iii) a separate agreement between Preservica, the Client and the third-party Escrow agent will govern the terms of the Escrow arrangement; and (iv) Preservica undertakes to provide the escrow provider with the information required to fulfil the Escrow obligations.
- 20.9 **Notices.** Any notice required to be given under these Terms by the Client shall be provided via email to legal@preservica.com and shall be deemed to have been served at the date and time the email was sent. Any notice required to be given under these Terms by Preservica shall be provided via email to the Client Administrator and shall be deemed to have been served at the date and time the email was sent.
- 20.10 **Governing Law.** This Agreement shall be governed by the territory, state and / or country of the Jurisdiction (as defined in these Terms).
- 20.11 **Jurisdiction.** The Parties irrevocably agree that the courts of the Jurisdiction (as defined in these Terms) have exclusive Jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

- 20.12 **Dispute Resolution.** Should a dispute or disagreement arise between the Parties relating to the interpretation, performance, or breach of this Agreement, either Party may initiate negotiations by providing written notice to the other Party, setting forth the nature of the dispute and proposing possible resolutions and a proposed initial meeting date. Without prejudice to the Parties' available rights and remedies, including available rights and remedies at Law, the Parties agree to make good-faith efforts to resolve any dispute or disagreement through amicable negotiations.

SCHEDULE 1

PRESERVICA PROFESSIONAL SUPPORT AND SERVICE TERMS

1 Scope of Support Services.

- 1.1 The Support Services shall consist of:
- 1.1.1 the provision of reasonable support in relation to the Client's and its Authorised Users use of the Services; and
 - 1.1.2 the provision of all regularly schedule error corrections, updates, and upgrades in relation to the Subscription Services; and
 - 1.1.3 the provision of email support to the Client's Authorised Users on Business Days during the hours as defined alongside, Monday to Friday.
- 1.2 Support services are provided out of Preservica's UK and USA locations and support hours will be affected by UK / US public holidays where applicable.
- 1.3 Preservica will provide the Support Service in relation to the current version of the Subscription Services.
- 1.4 Preservica shall have no obligation to provide the Support Services in relation to any Fault which arises from: (i) the Client or its Authorised Users use of the Services other than in accordance with the Policies, Documentation and the Terms; or (ii) the failure or problems within the Client's hardware, software, networks, internet connection or telecommunication links; or (iii) operator error, including bulk updates or deletions.
- 1.5 Preservica reserves the right to charge Additional Fees for any unreasonable support requests that are the result of operator error.

Territory / Country	Support Hours
UK	09:00 – 17:30 GMT / BST
EU	10:00 – 18:30 CET / CEST
USA & Canada	09:00 – 17:30 EST / EDT
Rest of World	09:00 – 17:30 UTC

2 Client's Support Obligations.

- 2.1 The provision of the Support Services shall be subject to the Client ensuring that:
- 2.1.1 requests for support are only submitted by or via the Client's Authorised Users through email or the support portal; and
 - 2.1.2 Preservica is provided with such access to the Client Data, personnel and facilities as Preservica reasonably requires to provide the Support Services.

3 Service Availability.

- 3.1 The Client acknowledges that Preservica will be entitled to interrupt the Services as defined in the Terms under Suspension of Services, or to carry out maintenance as follows:
- 3.1.1 for urgent and critical maintenance to restore the Services, at any time without notice; or
 - 3.1.2 for urgent and critical maintenance to prevent the Services from becoming unavailable, at any time without notice; or
 - 3.1.3 for proactive maintenance during the Client's Business Hours with 4 or more Business Hours prior notice; or
 - 3.1.4 for the release of new versions of the Services outside the Clients Business Hours without notice; or
 - 3.1.5 for any other maintenance requirement, Preservica shall attempt to minimise interruption of the Services during the Client's Business Hours.
- 3.2 Preservica shall notify the Client Administrator as shown in the Order Form where notice is required.
- 3.3 Subscription service availability is defined as the ability to access the Subscription Services.
- 3.4 Preservica shall use its reasonable endeavours to provide an uptime Subscription Service level availability of at least 99.5% measured per month, which percentage excludes any downtime which is caused by:
- 3.4.1 maintenance as outlined above; or
 - 3.4.2 outages caused by the Client or its Authorised Users, including Client integrated applications, Client infrastructure and / or Client Security Breach; or
 - 3.4.3 a Force Majeure Event affecting Preservica or its service providers; or
 - 3.4.4 Preservica suspending or terminating the Client or its Authorised Users access to the Services in accordance with Preservica's rights under the Terms.
- 3.5 If Preservica fails to meet this SLA, the Client may request and Preservica shall consider remediation by following the dispute resolution process.
- 3.6 Preservica's disaster recovery plans include the following target recovery objectives:
- 3.6.1 restoration of Service within a Recovery Time Objective ("RTO") of 4 hours; and
 - 3.6.2 maximum Client Data loss, or Recovery Point Objective ("RPO") of 24 hours.

4 Support Service Level Agreement

- 4.1 Preservica shall use its reasonable endeavours to respond to requests from the Client's Authorised Users for Support Services within the response times below, depending on the level of priority of the request.
- 4.2 The priority of each request will be determined by Preservica (acting reasonably and considering the views of the Client's Authorised Users).

Priority Level	Description	Response Time SLA	Commence Corrective Work
Urgent	A problem in the Services that causes a total or significant failure of the Service or is endangering Client Data.	2 Business Hours	8 Business Hours
High	A problem in the Services that limits full operational service without corrections to specific areas of operation. The problem has a significant business impact on the Client. The problem can be resolved by a workaround.	2 Business Hours	2 Business Days
Medium	A problem in the Services that limits full operational service without corrections to specific areas of operation. The problem has a significant business impact on the Client. The problem requires a significant code change for resolution.	2 Business Hours	20 Business Days
Low	A problem in the Services that does not prevent the use of a facility in operational service, or for which a locally identified cure or circumvention is available. Problems in this category do not need immediate attention but require agreement of a delivery date for a fix. Tickets marked as type "Request for Information", "Product Enhancement" or "third party" will automatically be categorised as Low.	4 Business Hours	Not Applicable

5 Complaints and escalation.

- 5.1 All concerns about the quality of service received or failure to comply with the Support Service Level Agreement should be reported to Preservica's Client Support Manager at escalations@preservica.com without delay. The Preservica Support Manager will promptly attempt to resolve the concern and where unresolved, escalate the issue internally through the management team, and ultimately to Preservica's Chief Executive Officer if necessary.