

# TERMS AND CONDITIONS FOR THE USE OF PRESERVICA STARTER FREE AND PRESERVICA FOR LOCAL GOVERNMENT

## 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 in the Policies.

**Agreement:** The agreement between Preservica and the Client in relation to the Subscription Services, Support 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 or verification of Client or Preservica specific records, accounts, finances, processes, policies or security incident information. This includes any attestation of compliance or other requirements to submit to the Client's third-party risk management processes.

**Authorized Users:** Employees, agents and independent contractors of the Client who are authorized 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 Commonwealth of Massachusetts.

**Business Hours:** 8.30 am to 5.30 pm Eastern Time, each Business Day.

**Client Administrator:** The person from the Client ordering and purchasing the Starter Subscription Services from Preservica or their nominated contact person registered with Preservica.

**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 to comply with the requirements of these Terms or use of the Subscription Services or Policies.

**Client:** The legal entity ordering and purchasing the Starter Subscription Services from Preservica as stated 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 start and end dates as detailed on the Order Form and extended by any renewal contract term.

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

**Effective Date:** The date on which the Order Form was submitted by the Client and is the date of this Agreement between the Parties.

**Fees:** The Annual Subscription 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, labor 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.

**Indemnitee:** The Party (including its legal counsel and insurance providers) that are seeking indemnification according to the Indemnity clauses of this Agreement.

**Indemnitor:** The Party (including its legal counsel and insurance providers) that is providing indemnification according to the Indemnity clauses of this Agreement.

**Insolvency Event:** An event whereby either Party:

- a) Files a voluntary petition for bankruptcy or insolvency under any applicable bankruptcy or insolvency Laws; or
- b) Is declared insolvent or bankrupt by a court or regulatory authority; or
- c) Makes a general assignment for the benefit of creditors; or
- d) Fails to meet financial obligations or liabilities as they become due; or
- e) Applies for or consents to the appointment of a receiver, trustee, or similar official for the substantial part of its assets; or
- f) Ceases or suspends its business operations for more than 30 days; or
- g) Any other circumstance indicating the party's inability to meet its financial obligations under the contract.

**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.

**Law:** All laws in the location as described in the section titled Legal Entity, Governing Law and Jurisdiction.

**Order Form:** Means the Preservica registration form completed and submitted by the Client. This includes the value specified in "Country" which is used to define data jurisdictions as outlined in the Client Data section of this agreement, and the "Your industry" selection which, if "Government" is selected shall result in the provision of Preservica for Local Government.

**Party and Parties:** means and refers to either or both Preservica and the Client ordering and purchasing the Starter Subscription Services.

**Permitted Usage:** means the Client's use of the Subscription Services in accordance with the Acceptable Use Policy.

**Person:** includes an individual, company, partnership or other organization.

**Policies:** Collectively refers to the Acceptable Use Policy, the Privacy Policy and the Shared Responsibility Model.

**Portal Incentive Features:** refers to the additional features as defined within Schedule 3 of this agreement.

**Preservica:** Shall mean the Preservica legal entity detailed in the section titled Legal Entity, Governing Law and Jurisdiction.

**Preservica for Local Government:** Means the modified version of Preservica Starter Free which includes configuration designed to support Local Governments.

**Privacy Policy:** Means the privacy policy, as set out in the Policies.

**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 o.

**Server Location:** Means the location of the server as detailed in the Order Form or as determined by Preservica.

**Services:** Includes Subscription 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 in the Policies.

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

**Storage Allowance:** The storage requirements and allowances as agreed to in the Order Form.

**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 or Documentation.

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

**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](http://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 to use the Services and Documentation.
- 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 the Client's Permitted Usage.
- 2.3 Preservica reserves the right to Audit the Subscription Services to establish the Client's compliance with these Terms, provided that 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 where:
  - 2.3.1 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
  - 2.3.2 in the event any Audit identifies non-compliance with these Terms, the Client shall be obliged to remediate all non-compliances.
- 2.4 Preservica and the Client agree to share responsibilities for the Subscription Service as outlined in the Shared Responsibility Model.
- 2.5 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.
- 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 that use of the Services will be uninterrupted or error-free, or that the Services and / or the information obtained through the Services will meet the Clients requirements; 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:
  - 3.3.1 manage, in consultation with Preservica's advisors, the incident through to resolution.
- 3.4 Where Preservica does not meet its obligations, Preservica warrants that it shall use all reasonable commercial endeavors to correct any such non-conformance. Such correction or substitution constitutes the Clients sole and exclusive remedy for Preservica's breach of its obligations.
- 3.5 Preservica warrants that it shall provide the Services from the Start Date as detailed in the Contract Term subject to reasonable installation and configuration lead times.
- 3.6 Preservica warrants that the Services will be provided with reasonable skill and care and will materially comply with the terms of this Agreement.
- 3.7 Preservica warrants that the Services will materially conform to the applicable Documentation.
- 3.8 Preservica warrants that it will provide the services under this Agreement in accordance with its policies and procedures relating to information security. Preservica will implement and maintain reasonable technical and organizational measures to protect the security and confidentiality of Client Data in line with industry standards.
- 3.9 Preservica warrants that it has the legal entitlements to provide the Service, and it shall maintain all necessary licenses, consents, and permissions necessary for the performance of its obligations under the Agreement.
- 3.10 Upon notification of a breach of warranty under this section by the Client Preservica shall at its discretion:
  - 3.10.1 correct the non-conforming Service so that it materially complies with the Documentation; or
  - 3.10.2 provide a replacement Service with substantially equivalent functionality; or
  - 3.10.3 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.
- 3.11 The above represents the Clients sole and exclusive remedy for breach of a warranty under this section.
- 3.12 Nothing shall prevent Preservica from providing the Services to any third-party.
- 3.13 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 Client shall comply with all Laws.
- 4.2 The Client undertakes that it 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 third-party; nor
  - 4.2.5 use or share the Client's access of all or any part of the Services with any 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 during the course of its use of the Services; nor
  - 4.2.8 infringe any Intellectual Property Rights through the Client's 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 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 Authorized User compliance with Preservica's Acceptable Use Policy; and
  - 4.3.3 ensure that Authorized Users be named individuals and their passwords be kept secure and confidential; and
  - 4.3.4 maintain a written, up to date list of current Authorized Users and provide such list to Preservica within five Business Days of Preservica's written request at any time or times; and
  - 4.3.5 ensure its networks, internet connectivity, telecommunication links and systems are suitable for the effective use of the Services; and
  - 4.3.6 maintain all necessary licenses, consents, and permissions to use the Services and that are necessary for Preservica to comply with its obligations under the Agreement; and
  - 4.3.7 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.

### 5 Client Data.

- 5.1 The Client 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 shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Data.
- 5.2 The Client shall have full responsibility, ownership, title and interest in the Client Data.
- 5.3 Preservica shall, in providing the Subscription Services, comply with its Privacy Policy.
- 5.4 If Preservica processes any personal data on the Client's behalf, the Client shall be the data controller and Preservica shall be a data processor.
- 5.5 Preservica shall process the personal data only in accordance with these Terms and any lawful instructions reasonably given by the Client.
- 5.6 The Client Data shall be located within the region as outlined below:
  - 5.6.1 Clients that specify Canada on the Order Form shall have their Client data located in Canada.
  - 5.6.2 Clients that specify United Kingdom on the Order Form shall have their Client Data located in the United Kingdom of Great Britain and Northern Ireland.
  - 5.6.3 Clients that specify Australia on the Order Form shall have their Client Data located in Australia.
  - 5.6.4 Clients that specify United States, or any other country on the Order Form shall have their Client data located in the United States of America, or a location as determined by Preservica.
- 5.7 Preservica will not edit, disclose, delete, transmit or use the Client Data except:
  - 5.7.1 for the purpose of and to the extent necessary for providing the Services or complying with the Client's instructions; or
  - 5.7.2 as required by applicable Laws; or
  - 5.7.3 as otherwise expressly permitted under these Terms.
- 5.8 Preservica shall be entitled, but not obliged, to monitor the Client Data. Where Preservica becomes aware of any prohibitive, offensive or illegal Client Data 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:
  - 5.8.1 request the Client to immediately review and remove any Client Data and to comply with any court or legal order.

- 5.9 Should the Client fail to act following a reasonable notice period from Preservica, then Preservica reserves the right to:
- 5.9.1 suspend the Client's access to the Subscription Services; and / or
  - 5.9.2 delete any Prohibited Content.
- 5.10 Where Preservica is not legally permitted to provide such prior notice to the Client, Preservica reserves the right to:
- 5.10.1 suspend the Client's access; and / or
  - 5.10.2 delete any Prohibited Content; and
  - 5.10.3 shall then notify the Client of any actions taken and where permitted, provide the reasons and information of any court order or legal notification.

## 6 Suspension of Services.

- 6.1 Preservica reserves the right to suspend the Client's right to access or use the Subscription Services with 30 days prior notice.
- 6.2 Preservica reserves the right to immediately suspend the Client's access to the Subscription Services without prior notice:
- 6.2.1 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
  - 6.2.2 if it poses a security risk to the Services; or
  - 6.2.3 if the Client's use of the Services contravenes any Law; or
  - 6.2.4 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.
- 6.5 Preservica reserves the right to modify, suspend, or discontinue the Service at any time, with or without notice, for any reason, including business reasons, technical issues, or changes in our product offerings.
- 6.6 Preservica reserves the right to change, suspend, or discontinue any aspect of the Service at any time, including the availability of any feature, or to impose limits on certain features or restrict your access to parts or all of the Service without notice or liability.

## 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 either up-front by credit card or immediately on receipt of an invoice from Preservica.
- 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 Federal Reserve Bank.
- 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 or to limit the Client's storage usage.
- 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.
- 7.8 Preservica may increase the Annual Subscription by the then current USA published CPI rates plus up to 7% at the time of any Agreement renewal. The increase shall take effect at the start of any renewal date.
- 7.9 Any Client requirements for an Audit shall be limited to an annual entitlement, be subject to at least 30 days prior notice and be subject to a fee of \$3,000 per day.
- 7.10 Where a 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 Changes

- 8.1 Preservica shall be entitled to amend this Agreement and attached Policies, or to make changes to the Documentation and the Services at any time without notice.

## 9 Proprietary Rights.

- 9.1 The Client acknowledges and agrees that Preservica owns all Intellectual Property Rights in the Services, Documentation and training materials.
- 9.2 Preservica shall own the Intellectual Property rights in any communicated suggested improvements originating from client ideas, requests or suggestions to the extent incorporated in the Services. Any ideas, requests or suggestions made by the Client are accepted by Preservica to be without warranty of completeness, accuracy, or commercial viability.
- 9.3 The Client acknowledges and agrees that any unauthorized 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.
- 9.4 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.

## 10 Confidentiality and Publicity.

- 10.1 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.
- 10.2 Each Party may publicly identify the other Party as a user or provider of the Subscription Services.
- 10.3 Where the Client is subject to freedom of information Laws the parties agree that:
- 10.3.1 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.
  - 10.3.2 Preservica will assist the Client with FOI Requests as needed, upon the Client's prompt written request.
  - 10.3.3 Preservica will keep FOI Requests confidential and will not disclose any Client Data unless required by Law or with the Client's written consent.
  - 10.3.4 Both the Client and Preservica will handle FOI Requests in compliance with applicable data protection and privacy Laws.
  - 10.3.5 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.

## 11 Indemnity.

- 11.1 Preservica shall defend, indemnify, and hold harmless the Client, its officers, directors, employees, agents, licensors and suppliers from and against all actions, proceedings, losses, damages, expenses, and costs (including without limitation court costs and reasonable legal fees) against the Client, arising out of any third-Party claim that the Services or Documentation infringes a third-parties Intellectual Property Rights.
- 11.2 The Client shall defend, indemnify, and hold harmless Preservica, its officers, directors, employees, agents, licensors and suppliers from and against all actions, proceedings, losses, damages, expenses, and costs (including without limitation court costs and reasonable legal fees) against Preservica, arising out of any third-Party claim that the Client Data infringes a third-parties Intellectual Property Rights or contains Prohibited Content.
- 11.3 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:
- 11.3.1 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; and
  - 11.3.2 the Indemnitee shall cooperate with the Indemnitor at the Indemnitor's sole cost and expense; and
  - 11.3.3 the Indemnitor shall promptly assume sole control of the defense of the claim; and
  - 11.3.4 the Indemnitee shall not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the said claim or action except upon the express instructions of the Indemnitor; and
  - 11.3.5 the Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing; and
  - 11.3.6 neither Party may settle a claim that results in liability or admission of liability to the other Party without that Party's consent, which shall not be unreasonably withheld or delayed; and
  - 11.3.7 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; and
  - 11.3.8 where the Indemnitor does not reasonably defend the claim, the Indemnitee may seek and apply for an injunction against the Indemnitor to compel the Indemnitor to fulfill their obligation to defend the claim; and
  - 11.3.9 each Party shall provide the other Party with reasonable updates on the progress of any claim.

- 11.4 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.
- 11.5 When notified of any alleged or actual infringement, both Parties shall take all reasonable actions to limit further liability.

## 12 Limitation of Liability.

- 12.1 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.
- 12.2 Preservica shall have no liability 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.
- 12.3 Preservica shall have no liability under this Agreement where there is a Client Default.
- 12.4 Unless otherwise specified in this Agreement the following limits of liability apply to all Services provided by Preservica:
  - 12.4.1 Neither Party shall limit liability in respect of fraud or fraudulent acts, willful misconduct, death, personal injury, or the indemnities stated above in these Terms; and
  - 12.4.2 Both Parties accept that no limit of liability shall apply to the Indemnities; and
  - 12.4.3 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
  - 12.4.4 Preservica's total aggregate liability to the Client for any other matter in connection with the Subscription Services (whether arising in tort (including negligence), contract or otherwise) shall be limited to the higher of USD \$100 (one hundred) or the amount of Fees paid or payable by the Client during the 12 months immediately preceding the date on which the claim arose.
- 12.5 The Client understands and accepts that Preservica has set its Fees and entered into this Agreement based on the limitations of liability and disclaimers of warranties and damages outlined in the previous sections.

## 13 Term and Termination.

- 13.1 The Agreement shall commence on the Effective Date.
- 13.2 This Agreement shall remain in effect for the Term as outlined below:
  - 13.2.1 For Starter Free customers this Agreement shall remain in effect until either Preservica, or the Client terminate it in line with this Termination section.
  - 13.2.2 For Preservica for Local Government, this Agreement shall remain in effect from 6 months from the Effective Date unless extended by Preservica in its sole discretion.
- 13.3 Either Party may terminate this Agreement with or without cause and with or without prior notice.
- 13.4 In the event of termination, the Client acknowledges that Preservica is not liable for any loss or damages arising from such termination.
- 13.5 Either Party may immediately terminate this Agreement if the other Party is subject to an Insolvency Event.
- 13.6 Without prejudice to each right or remedy of a non-breaching Party, either Party may terminate this Agreement for material breach by written notice, effective 30 days after notice unless the other Party cures the breach within the 30 days' notice period.
- 13.7 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.

## 14 Consequences of Termination.

- 14.1 On termination of the Agreement for any reason:
  - 14.1.1 the Services will cease; and
  - 14.1.2 all licenses granted under the Agreement shall immediately terminate; and
  - 14.1.3 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
  - 14.1.4 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.
- 14.2 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 as follows:
  - 14.2.1 where Preservica is in breach of this Agreement; or
  - 14.2.2 where Preservica suffers and Insolvency Event; or
  - 14.2.3 where Preservica suffers a Force Majeure Event in line with the terms outlined in this Agreement.
- 14.3 For the avoidance of doubt, the Client will not, in any other circumstances, be entitled to a refund of the Fees.
- 14.4 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.
- 14.5 The Client 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.
- 14.6 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.

## 15 Force Majeure.

- 15.1 Where a Force Majeure Event endures for more than 30 (thirty) days and the Subscription Services cannot be restored and remain unavailable by the event, 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.

## 16 Import and Export Compliance.

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

## 17 {intentionally omitted}.

## 18 Waiver.

- 18.1 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.

## 19 Severance.

- 19.1 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.
- 19.2 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 Entire Agreement.

- 20.1 Changes or modifications to this Agreement are only valid if in writing and signed by Preservica. No additional terms outside this Agreement are binding on either Party.
- 20.2 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.
- 20.3 The persons executing and delivering this Agreement on behalf of each of the Parties represent and warrant that each of them is duly authorized to do so and that the execution of this Agreement is the lawful and voluntary act of the Parties.
- 20.4 The following order of precedence shall be, in order; the Terms, the Order Form, the Schedules, the Policies in the order as listed below.

## 21 Policies.

- 21.1 The Parties hereby undertake to comply with the provisions of the following policies.
  - 21.1.1 **Acceptable Use Policy.** <https://website-assets.preservica.com/production/resources/Preservica-Global-Acceptable-Use-Policy-v8.0.pdf>
  - 21.1.2 **Shared Responsibility Model.** <https://website-assets.preservica.com/production/resources/Shared-Responsibility-Model-Global-v1.1.pdf>
  - 21.1.3 **Privacy Policy.** <https://preservica.com/privacy-notice>

## 22 Assignment.

- 22.1 The Client shall not, without the prior written consent of Preservica, 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 operational and / or Fee implications.

22.2 Preservica may assign or transfer its rights and obligations under this Agreement, in whole or in part, to any third party, without the need for prior consent from the Client. Such assignment or transfer shall be effective upon written notice to the Customer.

**23 No Partnership or Agency.**

23.1 Nothing in the Agreement is intended to or shall operate to create a partnership between the Parties, or authorize 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).

**24 Third Party Rights.**

24.1 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 assignees).

**25 {intentionally omitted}.**

**26 Notices.**

26.1 Any notice required to be given under these Terms by the Client shall be provided via email to [legal@preservica.com](mailto:legal@preservica.com) and shall be deemed to have been served at the date and time the email was sent.

26.2 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.

**27 Legal Entity, Governing Law and Jurisdiction.**

27.1 Where the Clients organization is based in the North American region:

27.1.1 Preservica shall be defined as Preservica Inc, incorporated in Delaware, USA with is offices at 16'th Floor, 50 Milk Street, Boston, MA02109, USA.

27.1.2 This Agreement shall be governed by and construed in accordance with, the state of the Commonwealth of Massachusetts and federal laws of the United States of America.

27.1.3 The Parties agree that any dispute of claim arising out of or in connection with this Agreement, its subject matter of formation (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the state courts of Suffolk County, Massachusetts or the United States District Court for the District of Massachusetts.

27.2 Where the Clients organizations based in any other region:

27.2.1 Preservica shall be defined as Preservica Ltd registered in England and Wales under company number 7998621 with the registered office of 32 The Quadrant, Abingdon Science Park, Abingdon, Oxfordshire OX14 3YS.

27.2.2 This agreement shall be governed by and construed in accordance with the laws of England and Wales.

27.2.3 The Parties agree that any dispute or claim arising out of or in connection with this Agreement, its subject matter or formation (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the course of England and Wales.

27.3

**28 {intentionally Omitted}.**