PRESERVICA ENTERPRISE PRIVATE CLOUD ORDER FORM

ORDER DETAILS

Effective Date	**MMM-DD-YYYY**
Preservica	**Preservica Inc** of 50 Milk Street, 16th Floor, Boston, MA 02109, USA
"Client"	**[Client Name]** of **[insert registered office address]**
Permitted Usage	For use by the Client to preserve digital information, which it owns, for its internal business purposes. Cannot be used to provide digital preservation services for third-party organizations.
Client Administrator	[Name] [Email]

SUBSCRIPTION DETAILS

Storage Allowance	[? TB S3][? TB Glacier]
License selected	EPC ☐ EPC Perform ☐
Server Location	[North Virginia	GovCloud(US-West)	Montreal]
Annual Subscription Fees	[$ insert amount] per annum
Installation, Configuration & Training	[$ insert amount] includes Initial Services and Training
Payment Periods	Annually in advance
Initial Subscription Term	From MMM-DD- YYYY to MMM-DD-YYY

ADDITIONAL SERVICES

Training	[Online training included in Year 1 Subscription Fee] [On-Site Training, Fee $xxxx]
Additional Services	[Description and Fee]

LICENSED SOFTWARE OPTIONS DETAILS

	Quantity
Storage Adapters for AWS (S3 & Glacier)	Included in annual subscription
Test Tenant (Perform only)	Included in annual subscription (Perform only)
Additional Tenants (Perform only)	0
Active Escrow Backup Service	0
Universal Access	Included in annual subscription
Catalog synchronization	Included in annual subscription
Package Ingest adaptors	Included in annual subscription
REST read/write API	Included in annual subscription
REST control API (Perform only)	Included in annual subscription

ANNUAL SERVICES

	Quantity
Private cloud hosting	Included in annual subscription
Product Updates, Operations and Maintenance	Included in annual subscription
Premium support	Included in annual subscription
Global User Group and Online Forum	Included in annual subscription
New product update training via regular webinars	Included in annual subscription

INITIAL SERVICES

	Quantity
Installation in AWS Private Cloud and Training	1
Catalog Integration	1
Active Directory Integration	1

STORAGE ALLOWANCE

Type	TB Limit
S3	
Glacier	

SIGNATURES

By signing this order form the signatory for the Client confirms on the Client's behalf that the details set out in this order are correct and confirms the Client's acceptance of Preservica's standard terms and conditions as attached.

Signed for and on behalf of the Client	Signed for and on behalf of Preservica
Name:	Name:
Title:	Title:
Date:	Date:

Terms and Conditions for the use of Preservica Enterprise Private Cloud

1 Interpretation

1.1 The definitions and rules of interpretation in this clause apply in the Agreement.

Acceptable Use Policy: Preservica's acceptable use policy, as referenced on Page 7 and as replaced, amended or updated from time to time by Preservica on written notice to the Client.

Additional Fees: the fees payable by the Client in relation to the Additional Services, as set out in the Order or otherwise agreed in writing between the Client and Preservica.

Additional Services: any additional services in relation to the Software (including any training on or configuration of the Software) set out in an Order, including any Deliverables.

Agreement: the agreement between Preservica and the Client in relation to the Subscription and any Additional Services, the terms of which are set out in these Terms and the documents referred to in them.

Annual Subscription Fees: the annual fees payable by the Client for the Subscription Services, being the fees set out in the Order, as increased or decreased from time to time in accordance with these Terms.

Applicable Laws: the laws of the Commonwealth of Massachusetts and the United States of America and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services.

Authorized Users: those employees, agents and independent contractors of the Client who are authorized by the Client to use the Subscription Services and the Documentation.

Business Day any day which is not a Saturday, Sunday, public holiday in the District of Massachusetts or a federal holiday in the United States of America.

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

Catalog Integration: the integration of a supported catalog with the Services as described in the documentation and set out in the Order.

Change Order: a written request from the Client for changes to the Subscription or the Storage Allowance.

Client: the person identified in the Order as the Client.

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

Client Data: the data inputted, transmitted, distributed, accessed, stored or uploaded by or on behalf of the Client in connection with its use of the Subscription Services.

Client Default: means any failure of the Client to comply with the requirements of these Terms or use the Services in accordance with Preservica's instructions.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 12.

Deliverables: any documents, software, information or materials that Preservica provides to the Client in connection with the Additional Services.

Documentation: the documents made available to the Client by Preservica on the Site which set out a description of the Subscription Services and the user instructions for the Subscription Services.

Effective Date: has the meaning set out in the Order.

Fees: the Annual Subscription Fees, the Excess Charges and the Additional Fees.

Initial Subscription Term: the initial period of the Subscription, as set out in the Order.

Insolvency Event: an event whereby a party a) is the subject of a resolution, court order, application to court or notice filed at court in respect of its winding up or administration; b) ceases to do business in the normal course; c) suspends or threatens to suspend payment of its debts or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; d) enters into a composition, compromise or similar arrangement with its creditors; e) is subject to the appointment of an administrator, liquidator or receiver; f) is the subject of any similar or analogous event in any jurisdiction.

Installation, Configuration & Training: The initial services including the implementation of the Subscription Services and connection to the Client's environment as described in the Order and set out in Schedule 1.

Intellectual Property Rights: all patents, copyrights, design rights, trademarks, software code, 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

Order: means the Client's order for the Services, as set out in Preservica's standard electronic or hard copy order form and accepted in writing by Preservica.

Payment Period: means each period time during the Subscription Term in respect of which an instalment of the Fees will be payable, being a period of 1 year (as set out in the Order).

Permitted Usage: means the use which the Client is permitted to make of the Subscription Services, as set out in the Order.

Policies: the Acceptable Use Policy, GDPR Policy, Support Service Policy, Usage and Security policy and the Privacy Notice, as referenced on Page 7.

Preservica: Preservica Inc, as further described in the Order.

Privacy Policy: Preservica's privacy policy, as published on the Site.

Prohibited Content: any Client Data that: a) does not comply with Applicable Laws; b) does not comply with the Acceptable Use Policy; or c) which is likely to have an adverse effect on Preservica or other users of the Subscription Services.

Server Location: means the location of the server on which the Client Data will be held, as set out in the Order.

Service Levels: the service levels to which the Subscription Services are to be provided, as set out in Schedule 2, the Support Service Policy.

Services: the Subscription Services and Additional Services.

Site: Preservica's website at www.preservica.com or any other website notified by Preservica to the Client from time to time for use in connection with the Subscription Services.

Software: the Enterprise Private Cloud software applications provided by Preservica as part of the Subscription Services.

Standard Rates: means Preservica's standard rates from time to time in respect of the Subscription Plans.

Storage Allowance: the quantity of Client Data that the Client is entitled to store via the Subscription Services, being the being the quantity purchased by the Client under an Order or Change Order.

Subscription: means the Client's subscription to the Subscription Services on the Subscription Plan selected by the Client, being the Subscription Plan set out in the Order, as upgraded or downgraded from time to time in accordance with these Terms.

Subscription Plans: in relation to the Subscription Services, the packages of services and data storage allowances offered by Preservica from time to time.

Subscription Services: the subscription services provided by Preservica to the Client via the Site, as described in the Documentation.

Support Service Policy: means the policy for providing support in relation to the Subscription Services, as set out in Schedule 2, as replaced, amended or updated from time to time by Preservica on written notice to the Client.

Usage and Security Policy: means the policy referenced on page 7 and as replaced, amended or updated from time to time by Preservica on written notice to the Client.

Terms: these terms and conditions.

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.

1.2 Words and expressions which appear capitalized in these terms and conditions but are not separately defined shall have the meaning set out in the Order Details.

1.3 A person includes an individual, company, partnership or other organization.

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

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

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

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

1.8 The terms "personal data", "data processor", "data controller" and "process" shall have the meanings assigned to them in the Data Protection Act 1998.

1.9 In relation to the Subscription, a reference to an "upgrade" is to the Client upgrading its Subscription to a Subscription Plan that attracts higher Annual Subscription Fees and a reference to a "downgrade" shall have the converse meaning.

1.10 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   Access to the Subscription Services

2.1 Subject to the Client pre-paying the Annual Subscription Fees and to the restrictions and requirements in these Terms, Preservica hereby grants to the Client a non-exclusive, non-transferable right to permit the Authorized Users to use the Subscription Services, the Software and the Documentation during the Subscription Term for the Permitted Usage up to the limits of the Storage Allowance.

2.2 In relation to the Authorized Users, the Client undertakes that:

2.2.1 it shall, and shall procure that its Authorized Users shall, comply with the Acceptable Use Policy and the Usage and Security Policy;

2.2.2 each Authorized User shall be a named individual;

2.2.3 each Authorized User shall be assigned a username by the Client Administrator which shall consist of that Authorized User's email address;

2.2.4 Authorized Users shall not be permitted or provided with the means to create guest accounts in relation to the use of the Subscription Services;

2.2.5 each Authorized User shall keep a secure password for his use of the Subscription Services, the Software and Documentation and that each Authorized User shall keep his password confidential; and

2.2.6 it shall maintain a written, up to date list of current Authorized Users and provide such list to Preservica within 5 Business Days of Preservica's written request at any time or times;

2.3 The Client shall permit Preservica 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. Such audits may be conducted no more than once per quarter 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 to investigate its suspicions.

2.4 If any of the audits referred to in clause 2.3 reveal that any password has been provided to any individual who is not an Authorized User, then without prejudice to Preservica's other rights, the Client shall promptly disable such passwords and the Client Administrator may not issue any new passwords to any such individual.

2.5 The Client shall not, and shall procure that its Authorized Users shall not, access, store, distribute or transmit any Viruses, or any Prohibited Content.

2.6 The Client shall not, and shall procure that its Authorized Users shall not:

2.6.1 except as may be allowed by any Applicable Law which is incapable of exclusion by agreement between the parties:

a) attempt to copy, modify, repair, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or

media or by any means, except to the extent expressly permitted under these Terms; or

b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

2.6.2 access all or any part of the Subscription Services, the Software and Documentation in order to build a product or service which competes with the Subscription Services and/or the Documentation;

2.6.3 without Preservica's prior written consent, use the Subscription Services, the Software and/or Documentation to provide services to third parties, unless such activity is specifically permitted under the Permitted Usage;

2.6.4 subject to clause 23.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Subscription Services, the Software and/or Documentation available to any third party except the Authorized Users,

2.6.5 attempt to obtain, or assist third parties in obtaining, access to the Subscription Services, the Software and/or Documentation, other than as provided under this clause 2.

2.7 The Client shall ensure that all information provided to Preservica (including information provided in connection with its registration for the Subscription Services and its Change Orders) is accurate, complete and not misleading.

2.8 The Client shall, and shall procure that the Authorized Users shall, use its and their reasonable endeavours to prevent any unauthorized access to, or use of, the Subscription Services, the Software and/or the Documentation and, in the event of any such unauthorized access or use, promptly notify Preservica.

2.9 The rights provided under this clause 2 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.

3   Services

3.1 Preservica shall, during the Subscription Term, provide the Subscription Services and make available the Documentation to the Client on and subject to the terms of the Agreement.

3.2 In consideration for the payment of the Annual Subscription Fees, Preservica will, as part of the Subscription Services, provide the Client with Preservica's premium customer support services during Business Hours in accordance with the Support Service Policy.

3.3 In consideration for the payment of the Additional Fees, Preservica will provide the Additional Services.

4   Installation, Configuration & Training

4.1 In consideration of the payment of the one-time Installation, Configuration & Training Fee, Preservica will provide Services in accordance with Schedule 1.

5   Preservica's Obligations

5.1 Preservica undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care and that any Deliverables will materially comply with any specification agreed in writing between Preservica and the Client.

5.2 The undertaking at clause 4.1 shall not apply to the extent of any non-conformance which is caused by a Client Default.

5.3 Preservica shall use its reasonable endeavours to ensure that the Subscription Services meet or exceed the Service Levels but shall not be responsible for any failure to meet or exceed the Service Levels which is caused by a Client Default.

5.4 If the Services do not conform with the undertaking in clause 4.1, Preservica will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Client's sole and exclusive remedy for any breach of the undertaking set out in clause 4.1.

5.5 Notwithstanding the foregoing, Preservica:

5.5.1 does not warrant that the Client's use of the Subscription Services will be uninterrupted or error-free; nor that the Services, Software, Documentation, Deliverables and/or the information obtained by the Client through the Subscription Services will meet the Client's requirements; and

5.5.2 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

Subscription Services, the Software and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

5.6 Nothing shall prevent Preservica from providing the Subscription Services to any third party.

5.7 Preservica warrants that it has and will maintain all necessary licenses, consents, and permissions necessary for the performance of its obligations under the Agreement.

6 Client data

6.1 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.

6.2 Preservica shall, in providing the Subscription Services, comply with its Privacy Policy.

6.3 If Preservica processes any personal data on the Client's behalf when performing its obligations under the Agreement, the parties record their intention that the Client shall be the data controller and Preservica shall be a data processor and in any such case:

6.3.1 the Client shall ensure that it has all consents and permissions necessary for the lawful use, processing and transfer of such personal data in connection with the Subscription Services;

6.3.2 Preservica shall process the personal data only in accordance with these Terms and any lawful instructions reasonably given by the Client from time to time;

6.3.3 the servers on which Client Data shall be stored will be situated within the Server Location provided that personal data provided by the Client or Authorized Users may be transferred outside the Server Location in accordance with the Privacy Policy; and

6.3.4 each party shall take appropriate technical and organizational measures against unauthorized or unlawful processing of the personal data or its accidental loss, destruction or damage.

6.4 Preservica will not intentionally edit, disclose, delete, transmit or use the Client Data except:

6.4.1 for the purpose of and to the extent necessary for providing the Subscription Services or complying with the Client's instructions;

6.4.2 as required by Applicable Laws; or

6.4.3 as otherwise expressly permitted under these Terms.

6.5 Preservica shall be entitled, but not obliged, to monitor the Client Data and to delete, remove, or suspend the Client's access to any Client Data which constitutes or contains Prohibited Content.

7 Client's obligations

7.1 The Client shall:

7.1.1 provide Preservica with all necessary co-operation and access to information as Preservica reasonably requires to perform the Services, including but not limited to Client Data, security access information and configuration services;

7.1.2 comply with all Applicable Laws with respect to the Services;

7.1.3 carry out all other Client responsibilities set out in these Terms in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the parties, Preservica may adjust any agreed timetable or delivery schedule as reasonably necessary;

7.1.4 ensure that the Authorized Users use the Subscription Services and the Documentation in accordance with these Terms and shall be responsible for any Authorized User's breach;

7.1.5 obtain and shall maintain all necessary licenses, consents, and permissions necessary for Preservica to provide the Services;

7.1.6 ensure that its network and systems comply with the relevant specifications provided by Preservica (if any) from time to time;

7.1.7 be solely responsible for procuring and maintaining all hardware, software, network connections and telecommunication links which are necessary for it to use the Subscription Services.

7.2 The Client acknowledges that neither Preservica nor its licensors are responsible in any manner, and the Client is solely responsible, for the proper configuration of user security roles and other security settings associated with the Subscription Services.

7.3 The Client shall procure that the Client Administrator takes responsibility for setting access levels, login accounts and passwords for all Authorized Users in accordance with these Terms. The Client may change the identity of the Client Administrator or written notice to Preservica but shall use its reasonable endeavours to ensure the continuity of the Client Administrator.

8 Suspension of Services

8.1 Without prejudice to any other right or remedy that Preservica may have under these Terms, Preservica shall be entitled to suspend the Client's right to access or use the Services immediately without notice if:

8.1.1 the Client is in breach of these Terms, including if it fails to pay the Fees on the due date;

8.1.2 Preservica reasonably considers that the Client's continued use of the Subscription Services is likely to:

a) incur liability on the part of Preservica to a third party;

b) poses a security risk to the Subscription Services or any third party;

c) contravene any Applicable law; or

d) amount to an unusual or excessive burden on the Subscription Services.

8.1.3 Preservica is subject to a Force Majeure Event affecting the provision of the Services, provided that Preservica shall use its reasonable endeavours to restore or provide similar services to the Services to the Client; or

8.1.4 the Client undergoes an Insolvency Event.

8.2 Except where the Services are suspended due to a Force Majeure Event affecting the Services, the Client shall remain liable for all Fees payable in respect of any period during which the Services are suspended.

9 Charges and payment

9.1 The Client shall pay the Annual Subscription Fees in advance of each Payment Period.

9.2 Preservica shall invoice the Client:

9.2.1 on the Effective Date for the Annual Subscription Fees payable in respect of the first Payment Period;

9.2.2 at or around the start of each subsequent Payment Period for the Annual Subscription Fees payable in respect of that Payment Period;

9.2.3 at the times and in the instalments agreed in writing with the Client in relation to the Additional Fees; and

9.2.4 in relation to any Excess Charges incurred by the Client, any time following the Payment Period in which the Download Limit is exceeded.

9.3 The Client shall pay each invoice submitted to it by Preservica in full, and in cleared funds, within 30 days of the invoice date.

9.4 If Preservica has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Preservica:

9.4.1 Preservica may, without liability to the Client, suspend the Client's access to the Subscription Services; and

9.4.2 interest shall accrue on such due amounts at an annual rate equal to 3% or the maximum amount permitted by law, whichever is higher, commencing on the due date and continuing until fully paid, whether before or after judgment.

9.5 All amounts and fees stated or referred to in the Agreement:

9.5.1 shall be payable in US Dollars or Canadian Dollars within Canada;

9.5.2 are non-cancellable and non-refundable, except as expressly stated in these Terms; and

9.5.3 are exclusive of value added tax and any other applicable sales or use taxes, which shall be added to Preservica's invoice.

9.6 The Client shall make all payments under the Agreement without set off, deduction or withholding, except to the extent required by law.

9.7 Once during each period of 12 months during the Subscription Term, Preservica may review and increase the Fees such increase to take effect on the next Payment Period following the review, provided that:

9.7.1 Preservica gives the Client not less than 30 days' notice of the increase and the increase does not exceed inflation plus 5%; and

9.7.2   such increases will not apply during the Initial Subscription Term

10   Change Orders

10.1   Subject to clause 9.3, the Client may by issuing a Change Order:

10.1.1   upgrade its Subscription at any time; or

10.1.2   downgrade its Storage Allowance at any time following the end of the Initial Subscription Term.

10.2   If, at any time, the Client exceeds the Storage Allowance, Preservica may, by written notice to the Client ("**Excess Notice**"), require the Client to:

10.2.1   remove the excess Client Data: or

10.2.2   submit a Change Order requesting an upgrade of its Subscription to accommodate the excess Client Data,

and if the Client fails to do so within 30 days of the date of the Excess Notice, it will be deemed to have submitted the said Change Order on the date of the Excess Notice.

10.3   Unless rejected by Preservica by written notice within 7 days of the date of a Change Order, a Change Order will be deemed to be accepted by Preservica and to take effect:

10.3.1   in relation to an upgrade or downgrade requested by the Client under clause 9.1, at the start of the next Payment Period; and

10.3.2   in relation to any upgrade or downgrade requested or deemed to have been requested by the Client under clause 9.2, upon the date or deemed date of the Change Order.

10.4   The Annual Subscription Fees will be automatically increased or reduced to take account of any Change Order, such increases or reductions to apply from the date on which the Change Order takes effect under these Terms and to be calculated in accordance with the then current Standard Rates.

11   Changes to this Agreement

11.1.1   Preservica shall be entitled to review and revise the Documentation, the Policies and the Services at any time on written notice to the Client where such revisions:

11.1.2   are made in order to comply with or reflect Applicable Law; or

11.1.3   are unlikely to have any adverse effect on the Client or its use of the Services.

12   Proprietary rights

12.1   The Client acknowledges and agrees that Preservica and/or its licensors own all intellectual property rights in the Services, the Software and the Documentation and in any suggested improvements to them which are made at the Client's request or suggestion. Except as expressly stated herein, Preservica does not grant the Client any rights to, or in, the intellectual property rights in the Services, the Software or the Documentation.

12.2   Preservica confirms that it has all the rights in relation to the Services, the Software and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, these Terms.

13   Confidentiality and publicity

13.1   Each party shall, during the Subscription Term and thereafter, keep confidential all Confidential Information of the other party, and shall not use for its own purposes nor without the prior written consent of the other disclose to any third party any Confidential Information of the other party unless such information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of these Terms, or subsequently comes lawfully into the possession of such party from a third party or disclosure of which is required by any Applicable Law or court order.

13.2   These Terms and the details of the Services are Preservica's Confidential Information and may not be disclosed by the Client without the prior written consent of Preservica.

13.3   Preservica may identify the Client as a user of the Services.

14   Indemnity

14.1   Preservica shall defend, indemnify and hold harmless the Client against, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of any claim that the the Software, any Deliverable or the Documentation infringes a third party's Intellectual Property Rights.

14.2   The Client shall defend, indemnify and hold harmless Preservica against, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of any claim that the Client Data infringes a third party's Intellectual Property Rights or any Applicable Laws.

14.3   The indemnities set out in this clause 13 are subject to the party with the benefit of the Indemnity:

14.3.1   notifying the other party promptly on becoming aware of a claim triggering the indemnity (a **"Claim"**);

14.3.2   allowing the other party to have sole control over the defence and/or settlement of the Claim; and

14.3.3   providing the other party, at the other party's expense, with all reasonably requested cooperation, information and assistance in relation to the Claim.

14.4   In no event shall Preservica or its employees, agents or sub-contractors be liable the Client in respect of any Claim to the extent that the alleged infringement is based on any Client Default or any use by the Client of the Services or Documentation after notice of the alleged or actual infringement has been received by the Client.

15   Limitation of liability

15.1   This clause 14 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.

15.2   Except as expressly and specifically provided in these Terms:

15.2.1   the Client assumes sole responsibility for results obtained from the use of the Services, the Software and the Documentation by the Client, and for conclusions drawn from such use;

15.2.2   Preservica shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Preservica by the Client in connection with the Services, or any actions taken by Preservica at the Client's direction;

15.2.3   all warranties, representations, Terms and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by Applicable Laws, excluded from the Agreement; and

15.2.4   the Services and the Documentation are provided to the Client on an "as is" basis.

15.3   Nothing in the Agreement excludes the liability of Preservica:

15.3.1   for death or personal injury caused by Preservica's negligence;

15.3.2   any liability which cannot be excluded by Applicable Law; or

15.3.3   for fraud or fraudulent misrepresentation.

15.4   Subject to clause 14.2 and clause 14.3:

15.4.1   Preservica shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of 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, indirect or consequential loss, costs, damages, charges or expenses, howsoever arising; and

15.4.2   Preservica's total aggregate liability to the Client in connection with the Subscription and the Services (whether arising in tort (including negligence), contract or otherwise) shall be limited to the amount of the total amount of Fees paid by the Client during the 12 months immediately preceding the date on which the claim arose

16   Term and termination

16.1   The Agreement shall commence on the Effective Date and, unless terminated earlier in accordance with these Terms, shall continue for the Initial Subscription Term and thereafter unless terminated by either party on not less than 30 days written notice to the other, expiring at the end of a Payment Period and expiring no earlier than the end of the Initial Subscription Term.

16.2   Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Agreement on notice with immediate effect and without liability to the other if:

16.2.1   the other party commits a material breach of any of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within 20 days of that party being notified in writing of the breach; or

16.2.2   the other party is subject to an Insolvency Event.

16.3 Without prejudice to any other rights or remedies to which the parties may be entitled, Preservica may terminate the Subscription on notice with immediate effect and without liability to the Client if:

16.3.1 it is entitled to suspend the Services under clause 7; or

16.3.2 factors beyond Preservica's reasonable control (including, without limitation, the termination of Preservica's arrangements with it suppliers or any changes in Applicable Laws) make it impractical, unfeasible or burdensome for Preservica to provide the Services.

17 Consequences of termination

17.1 On termination of the Agreement for any reason:

17.1.1 all licences granted under the Agreement shall immediately terminate;

17.1.2 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;

17.1.3 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced;

17.1.4 the Client shall promptly pay all outstanding Fees and other amounts payable by the Client under these Terms; and

17.1.5 the Client shall be entitled during the period of twenty days from termination to retrieve its Client Data held by Preservica in connection with the Subscription Services, after which Preservica shall be entitled to delete any Client Data in its possession or control.

17.2 On termination of the Agreement by the Client under clause 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. For the avoidance of doubt, the Client will not, in any other circumstances, be entitled to a refund of the Fees.

18 Force majeure

No party shall be liable to the other for any delay or non-performance of its obligations under these Terms arising from any cause beyond its reasonable control including, without limitation, any of the following: act of God, governmental act, war, fire, flood, explosion or civil commotion (a **"Force Majeure Event"**). For the avoidance of doubt, nothing in clause 17 shall excuse the Client from any payment obligations under these Terms.

19 Import and Export Compliance

19.1 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 its transfer and processing of the Client Data.

20 Variation

20.1 Except as otherwise expressly stated in these Terms, no variation of the Agreement will be effective unless it is in writing and signed by the parties or their authorized representatives.

21 Waiver

21.1 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.

21.2 Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

22 Severance

22.1 If any provision (or part of a provision) of these Terms is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

22.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

23 Entire agreement

23.1 These Terms, and any documents referred to in them, constitute the whole agreement between the parties and supersede any Client purchase order terms, previous arrangements, understandings or agreements between them relating to the subject matter they cover.

23.2 Each of the parties acknowledges and agrees that in entering into the Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Agreement or not) relating to the subject matter of the Agreement, other than as expressly set out in the Agreement.

24 Assignment

24.1 The Client shall not, without the prior written consent of Preservica, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

24.2 Preservica may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

25 No partnership or agency

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, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

26 Third party rights

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).

27 Notices

27.1 Any notice required to be given under these Terms shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at the addresses given in the Order or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as also set out in in the Order.

27.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in Business Hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

28 Governing law and jurisdiction

28.1 The Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including noncontractual disputes or claims) are governed by, and construed in accordance with, the law of the Commonwealth of Massachusetts without regard to the conflicts of law provisions thereof.

28.2 The parties irrevocably agree that 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) shall be brought exclusively in the in the state courts of Suffolk County, Massachusetts or the United States District Court for the District of Massachusetts (having territorial and subject matter jurisdiction over such dispute). The parties hereby consent to such exclusive jurisdiction and venue. Client hereby consents to personal jurisdiction as set forth herein.

Preservica Terms and Policies Online

Software Description
https://preservica.com/uploads/resources/405326-Preservica-Enterprise-Private-Cloud-v6.1.pdf

Privacy Notice
https://preservica.com/privacy-notice

GDPR Policy
https://preservica.com/uploads/resources/Policies/GDPR-Data-Policy.pdf

Usage & Security
https://preservica.com/uploads/resources/Policies/Preservica-EPC-USec-v1.pdf

Acceptable Use
https://preservica.com/uploads/resources/Policies/Preservica-EPC-AU-v1.pdf

Schedule 1

Preservica Enterprise Private Cloud Installation and Training

1. INSTALLATION AND TRAINING

1.1   Preservica will ensure the Software is installed and commissioned within a single private cloud and that the customer organization is given dedicated training for up to ten users, on how to use the software, following Preservica's ISO 9001 certified implementation procedures. This will cover:

1.2   Installation of the specified Software in the Order Details including:

   (a)   Installation of the current version of the Software within the hosted private cloud environment

   (b)   Deployment of optional tenant for test and training purposes

   (c)   Deployment of optional tenant(s) for additional isolation purposes, if purchased

   (d)   Supply of documentation in English covering administration and usage, and as provided by training described in section 1.3

   (e)   Configuration and instruction for the Client's administrators on how to maintain the Software connection with the following software and systems (the type and versions supported as specified in the Product Documentation)

   - Connect Preservica to the Client's Active Directory or other identity management system if requested (as specified in the Product Documentation)
   - Connect Preservica to external supported catalogue systems

1.3   The provision of the following online webinar based training courses to Client's staff:

   (a) User training: Access to the series of pre-requisite and elective 1-hour training webinars for up to 10 users of the Software, covering how to ingest, preserve and access material, and use existing reports. Additional training can be purchased on request.

   (b) Administrator training: Access to a series of training webinars for up to 5 administrators of the Software that cover the actions available to users with privileged permissions: uploading and configuring metadata schemas and transforms, custom reports, and setting permissions.

1.4   All training is delivered in English with English Language documentation and training materials.

Schedule 2

Preservica Support Service Policy

1.   SCOPE OF SERVICES

1.1   The Support Services shall consist of:

1.1.1   the provision of technical support in relation to the Client's use of the Services ("**Technical Support**"); and

1.1.2   the provision of all regularly schedule error corrections, updates and upgrades in relation to the Software.

1.2   The Technical Support shall consist of:

1.2.1   the provision of email support to the Client Administrator during the hours from 5.30am-6pm EST (includes "Business Hours"), Monday to Friday except for public holidays in the U.S.A. ("Business Days").

1.3   Preservica will provide the Support Service in relation to the latest version of the Software and the prior version, for a period of three (3) months from the release of the latest version.

2.   CLIENT'S OBLIGATIONS

2.1   Preservica shall have no obligation to provide the Technical Support in relation to any Fault which arises from:

2.1.1   the Client's use of the Services other than in accordance with the Documentation and the Terms;

2.1.2   the use by the Client of the Services in connection with any hardware, software or networks not approved for use in connection with the Services by Preservica;

2.1.3   the failure or problems within the Client's hardware, software, networks, internet connection or telecommunication links; or

2.1.4   operator error.

2.2   The provision of the Technical Support shall be subject to the Client ensuring that:

2.2.1   requests for support are only submitted by or via agreed users; and

2.2.2   Preservica is provided with such access to the Client's data, personnel and facilities as Preservica reasonably requires to provide the Technical Support.

3.   SERVICE LEVELS

3.1   **Service availability**

3.1.1   The Client acknowledges that Preservica will be entitled to interrupt the Services to carry out necessary maintenance as follows:

(a)   Preservica may carry out urgent maintenance and the application of maintenance releases (excluding new release versions) of the Services anytime outside Business Hours, provided Preservica has given the Client not less than 4 Business Hours' prior notice; &

(b)   Preservica may apply new versions of the Software at a time agreed with the Client and within three (3) months of the latest new version release.

("Maintenance")

3.1.2 Preservica shall use its reasonable endeavours to provide an uptime services availability of at least 99.5% in each Payment Period except in respect of any downtime which is caused by:

(a)   Maintenance;

(b)   outages caused by the Client or a third party;

(c)   a Force Majeure Event; or

(d)   Preservica suspending or terminating the Client's access to the Services in accordance with Preservica's rights under the Terms.

3.2   Technical support service level

3.2.1 Preservica shall use its reasonable endeavours to respond to requests from the Client Administrator for Technical Support within the following response times, depending on the level of priority of the Fault:

Priority Level	Description	Response Time Target	Resolution Time Target
1	A problem in the Services that causes a total or significant failure of the Service or is endangering Client Data	1 Business Hours	8 Business Hours
2	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
3	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
4	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 "3rd Party" will automatically be categorized as Priority 4	4 Business Hours	Not Applicable

3.2.2 The priority of each Fault will be determined by Preservica (acting reasonably and considering the views of the Client Administrator).

4.   COMPLAINTS AND ESCALATION

All concerns about the quality of service received or failure to comply with the Service Levels should be reported to the Preservica Client Support Manager at support.manager@preservica.com without delay. The Client Support Manager will promptly attempt to resolve the concern and will report the issue internally through the management chain to Preservica's Chief Executive.

Preservica receives very few customer complaints but each one is recognized as an opportunity to improve our service.