

## General Terms and Conditions (“GTCs”) of DeepCloud AG for use of the DeepCloud account, the DeepServices, (incl. DeepCloud mobile Apps )

### 1. General information

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- 1.1 These are the General Terms and Conditions (**GTCs**) of DeepCloud AG, Abacus-Platz 1, 9300 Wittenbach, Switzerland (**DeepCloud**) for the use of the DeepCloud account and DeepServices (including DeepCloud mobile apps) as a Software-as-a-Service solution (**SaaS Solution**), including for the hosting of content.
- 1.2 The contractual relationship between DeepCloud and the holder of the DeepCloud account (**Owner**) for the SaaS solution shall commence upon registration, subject to acceptance of these GTCs, at the latest upon use of a DeepService or a DeepCloud mobile app (**DeepService**)
- 1.3 These GTCs shall be without prejudice to, and apply concurrently with, other provisions applicable to the use of software, applications or services, including those of other providers, during use of the SaaS solution.

### 2. DeepCloud account, Owner and Authorised Users

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- 2.1 Following successful registration, either a privately used DeepCloud account or an account for a company, public-law entity, corporation, foundation or association (**Organisation**) shall be set up.
- 2.2 The Owner must be of full legal age, have the necessary legal capacity to contract and enter into binding transactions and be authorised by the Organisation to accept these GTCs. Acceptance of the GTCs is assumed. In certain cases of use, identification of a person and/or verification of the Organisation may be necessary.
- 2.3 After registration and login, the SaaS Solution may be used by the Owner and the Owner’s authorised users (**Users**). The Owner is responsible for the conduct of its Users.
- 2.4 All contractually relevant information must always be kept accurate and up to date. DeepCloud may require proof of the accuracy of such information or conduct verifications itself.
- 2.5 Prior to a change of Owner, both the old and the new Owners must express their consent through their respective authorised representatives.
- 2.6 Contractually relevant information shall be deemed duly delivered to the Owner if sent by post, to the Owner’s e-mail address or DeepCloud account, or by any other legally valid means.
- 2.7 If DeepServices are activated by a software user within third-party software (such as Abacus Software), such activation shall be performed for the Owner as the licensee of such software, on the assumption that the Owner is duly authorised to activate the DeepService in question.

### 3. Scope of use

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- 3.1 The DeepCloud account is available to the Owner with different DeepServices. The DeepServices can be used directly via the DeepCloud account or within third-party software and involve permission to use the relevant software over the internet and the storage of content as part of hosting.
- 3.2 Information about the scope of use and functionalities of the DeepServices can be obtained from DeepCloud’s relevant websites. DeepCloud may continuously update the SaaS Solution together with the DeepServices and extend or adjust their functions.
- 3.3 The SaaS Solution together with DeepServices are appropriate for ordinary use of comparable services. The Owner acknowledges them to be in good working order, fit for purpose and suitable for use in accordance with the contract. The Owner itself shall clarify whether they meet its requirements.
- 3.4 To ensure the reliability and availability of the DeepServices, DeepCloud may limit the use of the DeepServices within a certain timeframe for capacity reasons if the number of queries per Owner and its Users exceeds a certain volume.
- 3.5 The SaaS Solution together with the DeepServices shall be operated in the same release for all Owners and launched at the same time for all Owners.
- 3.6 DeepCloud may provide testing and demonstration environments for a DeepCloud account. To the extent permitted by law, DeepCloud hereby excludes all warranties and liability.

### 4. DeepSign

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- 4.1 DeepSign enables persons and organisations (**Signatories**) to electronically sign digital documents by means of electronic signatures (**Signatures**) and seals (**Seals**) and to use timestamps that are made available by certification, trust and identification services (**Trust Services**) with qualified certificates and timestamps for electronic Signatures and Seals from a certification services provider recognised in Switzerland under the Swiss Federal Act on Electronic Signature (**ESigA**) and from a Trust Service Provider recognised in the EU under the EU Regulation on electronic identification and trust services for electronic transactions in the internal market (**eIDAS Regulation**) (**Trust Service Provider**)
- 4.2 DeepSign offers the various Trust Services and types of Signatures and Seals made available by DeepCloud, with limitations in certain cases.
- 4.3 To enable the use of a Simple Electronic Signature (**SES**), qualified electronic timestamps are integrated; the [Terms of Use](#) of DeepCloud and of the Trust Service Providers are applicable (viewable [here](#) and [here](#)).
- 4.4 For the use of other types of Signatures (such as Advanced Electronic Signatures (**AESs**) and Qualified Electronic Signatures (**QESs**)) or Seals, additional requirements must be met, including those of the relevant Trust Service Provider, such as confirmation of the Signatory’s residence in the approved countries, ([viewable here](#)), authentication and identification of the Signatory, and acceptance of the Trust Service Provider’s Terms of Use ([here](#) and [viewable here](#)).
- 4.5 To be permitted to create Seals, it is necessary to comply with the Trust Service Provider’s specifications. True and complete information must be provided in the application process. Any changes (e.g. in names or trade names) must be reported immediately. The Seal Creator shall keep its authorised seal users up to date. The Seal Creator shall authorise DeepCloud, in its dealings with the Trust Service Provider, to use the certificate in order to create Seals on the Seal Creator’s behalf and connect it to the Trust Service using DeepSign.
- 4.6 As soon as DeepSign has connected with the Trust Service for the Seal Creator by means of an access certificate, additional individual authentication no longer takes place for each seal creation process. If necessary, the Seal Creator may order a cancellation from DeepCloud according to the procedures in the Trust Service Provider’s certification guidelines.

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- 4.7 The Seal Creator or Signatory expressly accepts that all the data necessary to use DeepSign may be collected, stored and processed. Such data is derived from application and identification process so that the Trust Service Provider can create a digital certificate.
- 4.8 Upon request, the Signatory will receive the document to be signed in a fully downloadable format before declaring intent to request the Signature and after it has been signed, and be informed of the type of Signature or Seal before accepting the relevant Terms of Use.
- 4.9 To identify and authenticate a person or organisation, **DeepID** may be used beforehand, subject to the DeepID Terms of Use, or a third-party identification service approved by DeepCloud, subject to its Terms of Use.
- 4.10 Upon approval by DeepCloud and subject to the Owner’s acceptance of the DeepSign OnPrem Guidelines (**OnPrem Guidelines**), DeepSign may be used as a fee-based OnPrem solution in the Owner’s software (such as a specialised application). This enables hash signing for Signatures and Seals, so that the document to be signed or sealed does not have to leave the Owner’s system landscape. The Owner shall comply with the OnPrem Guidelines, which are subject to change by DeepCloud on reasonable notice. If the customer fails to comply, in whole or in part, with the OnPrem Guidelines, DeepCloud is entitled to limit or terminate the use of the OnPrem solution.
- 4.11 Different Signatures and Seals of a Trust Service Providers may be used, depending on the applicable law. Their selection is entirely up to the Owner and its Users (**Initiator**). The Initiator shall take into consideration any special features resulting from the legal system applicable to the Initiator. Legal consequences of individual Signature types may differ and certain documents require a specific Signature type. Signatures or Seals may produce different effects when laws other than those of Switzerland or the EU are applicable, in which case the formal requirements may not be met.
- 4.12 The exchange of encrypted data, the use of certain technical algorithms, and the issuing of electronic certificates are restricted by law in certain countries. The relevant details will be clarified in advance by the Signatories, the Seal Creator or the Initiator themselves.
- 4.13 The Initiator, the Signatory and/or the Seal Creator themselves are responsible for the storage of their documents.
- 4.14 DeepCloud neither participates in nor is a party to the transactions intended through the documents signed. DeepCloud has no control over how DeepSign is used by the Initiator or the Signatories and has no knowledge of the legal system applicable to the Initiator. DeepCloud is not responsible for which Signature type is chosen by the Initiator, how the Initiator determines the process of obtaining a Signature, and whether time limits or other requirements are applicable in that respect. DeepCloud rejects any and all liability for any associated damage.
- 4.15 The Owner and/or Seal Creator shall allow their signatory Users to grant the necessary authorisations for DeepSign (such as accepting the Trust Service Provider’s Terms of Use), and to provide, make, and receive requests or approvals regarding their digital documents on behalf of the Owner or the Signatory.
- 4.16 The Owner, Signatory or Seal Creator shall promptly forward to DeepCloud any relevant changes in their (organisational) data as well as any information regarding the Trust Services with respect to changes in the configuration of its access data, compromising of the accesses, security incidents or any access certificates, so that DeepCloud can fulfil any obligations to report to the Trust Service Providers.
- 4.17 DeepCloud shall be entitled to modify the Terms of Use of DeepSign regarding the Trust Services at any time if, for example, the Trust Service Providers modify their terms and conditions in relation to DeepCloud, as well as restrict, suspend, or terminate the use of the Trust Services.
- 4.18 Based on statutory and regulatory provisions for the Trust Service Providers, DeepCloud and the Trust Service Providers are entitled to audit the Owner in order to verify compliance with the current guidelines. The right to audit includes, among other things, the right to demand the release of information, data, log files and documents (as well as data of the Signatory, Owner, Seal Creator or Initiator) subject to giving a reasonable time allowance, or the right to obtain access to systems.
- 4.19 In case of detection or reasonable indications of security threats, unlawful or improper use of DeepSign, actions causing disruptions, or in case of detection of serious non-conformities, DeepCloud is entitled to take measures to remedy the relevant non-conformity as well as to prevent or mitigate damage (such as interruption of use or blockage). In such cases, DeepCloud shall provide information promptly and, if possible, in advance.
- 4.20 DeepCloud will store and use all necessary information connected with a Signature or Seal, such as the identification processes, the course of the transaction, (image and document) hash values, signature/timestamp selection, any limitations of liability, time of execution or deletion of a request, names of sender and recipients, e-mail addresses and Signature/Seal IDs), in order to be able to provide DeepSign properly.
- 4.21 If the requirements for providing Signatures or Seals are not (or are no longer) fulfilled, DeepCloud may deny corresponding requests for Signatures or Seals.
- 4.22 DeepValidator is available to DeepCloud for the validation of electronic Signatures. When DeepValidator is used, these Terms of Use [Terms of Use](#) and certain usage restrictions apply: for example, Advanced Electronic Signatures and Seals may not be clearly identified as such in every case. Simple Electronic Signatures cannot be verified because their validation is not definitely possible and the identity of the Signatory cannot be established with sufficient certainty. After using DeepValidator, the User should therefore check the commercial register entry, particularly considering the date and time of Signature and any restrictions on the signing authority.

### 5. DeepServices with AI

- 5.1 DeepCloud provides various DeepServices with Artificial Intelligence (**DeepServices with AI**). Third-party AI models that have been modified by DeepCloud may be used. Such AI models are operated on DeepCloud servers. No information transfer to the AI model providers takes place. When such AI models are used, the Terms of Use of those providers are also applicable, which are viewable [\[here\]](#) and may be updated at any time in accordance with the specifications of the providers of the AI models.
- 5.2 DeepCloud is entitled to update, adjust, limit or replace the AI models used as well as any modifications thereof. DeepCloud has no control over the technical design or scope of the AI models supplied by those providers or the preparatory training of those AI models by the providers.

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- 5.3 The Owner hereby warrants that during the use of DeepServices with AI by the Owner or its Users, the content entered therein (**Input**) will not infringe any third-party rights and that the Owner holds all necessary rights and approvals and licences for the Input into DeepServices with AI.
- 5.4 The Owner warrants that it will not enter any content into DeepServices with AI that violates any applicable laws and regulations, breaches any Terms of Use of the AI model providers, or infringes any third-party rights. In particular, DeepServices with AI shall not be used to engage in any illegal activities, to infringe any intellectual property or privacy rights of third parties, to overload or manipulate DeepServices with AI, or circumvent security mechanisms, to use content to create one’s own AI models or systems, to carry out automatic queries, scraping or data captures, or to perform reverse engineering, decompilation or reconstruction of DeepServices with AI. In such a case, DeepCloud reserves the right to limit or terminate the use of DeepServices with AI.
- 5.5 The Owner shall indemnify and hold DeepCloud harmless from third-party claims attributable to the unlawful use of DeepServices with AI, the breach of the Terms of Use of the AI model providers, or the infringement of third-party rights.
- 5.6 When using DeepServices with AI, the Owner reserves all rights to all Inputs that belong to the Owner. DeepCloud shall claim no ownership of such Inputs.
- 5.7 Any present or future rights to the content (**Outputs**) generated by the Owner or its Users through Inputs to DeepServices with AI shall belong to the Owner or the relevant rights-holder. DeepCloud shall not claim ownership thereto but is entitled to generate Outputs that are identical or similar to such Outputs.
- 5.8 Before making use of the Outputs, the Owner or its Users shall check whether their use would infringe any third-party rights. When using the Outputs, Owner or its Users shall be responsible for the purposes, accuracy, suitability and lawfulness of such Outputs and acknowledge that AI systems may produce erroneous, incomplete and misleading Outputs. DeepCloud assumes no responsibility for any decisions of the Owner or its Users that are based on use of the Outputs.
- 5.9 The Owner or its Users shall use Outputs only to the extent permitted by law when making decisions concerning natural persons that have legal effects on such persons or otherwise significantly affect them (such as decisions regarding employment or profiling).
- 5.10 DeepCloud shall receive a cost-free right to process and use all Inputs and Outputs for the purpose of providing DeepServices with AI. This is not necessary if the Deep Service with AI OnPrem (available for certain DeepServices) is in use by the Owner.
- 5.11 DeepCloud shall not generally use the Owner’s Inputs and Outputs for its own purposes other than the purposes described in these GTCs. In special cases, subject to approval by the Owner (as in a support case), DeepCloud reserves the right to use Inputs and Outputs provided, once they have been anonymised, to improve and further develop its services and for purposes of training its AI Services.
- 5.12 If DeepCloud receives a report of, suspects or becomes aware of unlawful Inputs or Outputs, it may examine their content and delete them in order to prevent or remedy violations of these GTCs or applicable laws, as well as misuse or security incidents, if the customer itself fails to delete them within a reasonable period despite being requested to do so.
- 5.13 If personal data is also processed through Inputs of the Owner or its Users during the use of DeepServices with AI, the Owner, as the controller within the meaning of data protection law, shall be responsible for the lawfulness of such data processing.
- 5.14 If existing regulations on AI systems (such as transparency obligations) are involved in the use of DeepServices with AI, it is the Owner’s responsibility to ensure compliance with the obligations in question, in the same way as an operator or provider of such an AI system.

### **6. Additional Services**

- 6.1 The scope of use of the DeepCloud account and the DeepServices does not include additional services, such as the customised development or adjustment of a DeepService, On Prem solutions on the Owner’s premises, Special Boxes, the integration of additional software and services from **Third-Party Providers** (such as banks, payment service providers, software providers, Trust Service providers) via interfaces. Such additional services may be used once the corresponding requirements are met. Separate contractual and data protection provisions are applicable in that case, which the Owner accepts upon activation or use.
- 6.2 By activating and using additional services, the Owner expressly authorises the participating parties to access, exchange and process the corresponding content as necessary.
- 6.3 When DeepPay is used, it is possible to connect to Third-Party Providers that perform payment-initiation or account-information services. An exchange of content between the participants takes place, with each participant responsible for the relevant data processing performed and the security of the data in its sphere of activity in accordance with the agreed provisions. DeepCloud shall enable the data exchange with such Third-Party Providers via an interface without being involved in their services or having any influence on them. The Owner hereby grants its consent to DeepCloud and the relevant Third-Party Provider for the data transfer via DeepPay. Upon termination of the contractual relationship, of the use of DeepPay, or upon termination of such a service, the Owner itself shall revoke its consent to the data transfer vis-à-vis the Third-Party Provider of the linked service. DeepCloud for its part, shall then revoke its consent to the relevant data transfer and perform no further data transfers.
- 6.4 DeepCloud is not responsible for the data handling and processing during use of the additional services of the Third-Party Providers (including payments ordered through them or account information). DeepCloud ejects any and all liability in this regard.
- 6.5 DeepCloud may limit, suspend or (permanently) terminate the use of such additional services for good cause (such as anomalies in access behaviour, disruptions, attacks, hazards, impairment of other systems, maintenance work, data security breaches, breaches of contract, or force majeure events).

### **7. Rights of use, intellectual property rights**

- 7.1 DeepCloud hereby grants a personal, non-exclusive, non-transferable, non-assignable, single right, limited in time and space, for personal use of the SaaS Solution for the duration of the contractual relationship. This means that only the Owner and the Owner’s Users may use the SaaS Solution.

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- 7.2 The Owner shall not, without DeepCloud’s written consent, make the software used available in any form to unauthorised third parties, grant sublicences thereto, transfer, otherwise exploit or use said software for any purpose other than that offered by DeepCloud herein.
- 7.3 The limitation of the scope of the rights granted shall not be circumvented by integrating proprietary program components into the software or by enlarging the number of Users by programming a proprietary interface (“Interface”) unless expressly authorised to do so by DeepCloud. If Users with an external Interface enter or view data that is processed via interfaces, these Users can be included in the scope of use.
- 7.4 DeepCloud is entitled to license interfaces and report generators so as to be able to export data at the Owner’s request from the SaaS Solution to third-party systems where the data can be further processed. The same applies whenever interfaces and report generators are primarily used to view or print out the data via a third-party system so that Users of the third-party system can view and use that data. When a DeepCloud interface is used, the [Terms of Use] of the DeepCloud REST API shall apply
- 7.5 The Owner shall inform DeepCloud immediately in writing if third parties assert intellectual property rights against the Owner based on use of the SaaS Solution. The Owner shall not take any legal action without DeepCloud’s authorisation and shall not of its own accord acknowledge any claims of the third party without DeepCloud’s consent. DeepCloud shall take all necessary defensive measures, such as defending against claims of third parties, at its own expense, unless such claims are based on breaches of duty by the Owner or by the Owner’s Users.
- 7.6 When using the SaaS Solution (software and technology), the Owner shall comply with all applicable export/import control regulations (export, import, or transit), particularly those of the USA, including sanctions and embargoes.
- 7.7 All intellectual property rights to the SaaS Solution (including software), to content, texts, images, photographs, videos, logos, or other information of DeepCloud, including its websites, shall belong exclusively to DeepCloud or to the designated rights holders. Written consent of the rights holders must be obtained in advance for any further use of any intellectual property rights.
- 7.8 DeepCloud is entitled to display an uploaded company logo of the Owner in the context of its DeepCloud account without any claim to remuneration. The Owner is entitled to delete its company logo at any time.

### **8. Obligations of the Owner and the Owner’s Users**

- 8.1 If the Owner wishes to use DeepServices in the context of a third-party solution, the Owner shall ensure the connection to that solution and take out the necessary subscriptions and enter into the required (licence) agreements for the third-party software. DeepCloud shall enable technical communications only with the officially supported versions of the integrated solution. DeepCloud is not obliged to maintain technical communication for older versions.
- 8.2 In special cases (such as impending threats or technical changes), the Owner shall install an appropriate update for its third-party solution by the specified deadline, failing which, DeepCloud shall have no obligation to maintain technical communication with the third-party solution.
- 8.3 The Owner shall use the SaaS Solution within the authorised scope and comply with its obligations under these GTCs. The Owner shall ensure that its Users also comply with such obligations, to the extent relevant. The Owner shall indemnify DeepCloud AG against all third-party claims based on use of the SaaS Solution by the Owner or by the Owner’s Users in violation of the contract or of the law.
- 8.4 The Owner shall ensure that the technical requirements are met to enable use of the SaaS Solution within the chosen scope of use and shall comply with the requirements in accordance with the state of the art (such as access protection and the protection of its systems and terminals from misuse, attacks and malware).
- 8.5 The Owner shall promptly inform DeepCloud of any malfunctions and anomalies and provide possible support services to enable the malfunction to be remedied.
- 8.6 The Owner shall decide, under its own responsibility, which content is processed and stored in the SaaS Solution and whether the data security provided by DeepCloud is sufficient for such content.
- 8.7 When using the SaaS Solution, the Owner shall comply with the relevant statutory provisions that are applicable to its business activity (such as provisions regarding data protection, competition, and intellectual property rights). DeepCloud gives no guarantee that the SaaS Solution is suitable for compliance with such provisions.
- 8.8 The Owner is responsible for content in the SaaS Solution and shall not process any unlawful content therein. DeepCloud may review the content for legal compliance and lawfulness only to the extent that it is required to do so by law or by an order issued by a court or government agency. To the extent possible and permissible, DeepCloud shall inform the Owner of any such review in advance. DeepCloud may then be required to hand over or grant access to content. In the process, DeepCloud shall exhaust the appropriate remedies to which it is entitled for the legal defense.

### **9. Ordering, fees, payment terms, credit information**

- 9.1 The SaaS Solution and DeepServices may be offered either free of charge or for a fee.
- 9.2 In case of fee-based use of the SaaS Solution, the fee payable by the Owner is stated in the current price list (see the DeepCloud websites or SaaS Solution). The fee is determined by the relevant scope of use plus a licence fee, subscription fee, or package fee, where applicable. Any unused services of a package shall not be carried over to the next contract year but rather lapse at the end of the contract year without any refund of fees already paid.
- 9.3 To place a binding and chargeable order in the DeepCloud account, the corresponding field in the subscription overview must be clicked. With some DeepServices, an order confirmation e-mail will be sent. The order is deemed accepted upon such confirmation, upon activation of the subscription, or upon use of the DeepService. In-App purchases can also be made via the corresponding App Store.
- 9.4 Ordering or making chargeable use of a DeepService gives rise to a payment obligation, which may involve transaction fees and/or annual or monthly fees. For a month already in progress, the monthly fee can be billed either in full or pro rata temporis. Certain services are offered on a per-request or per-use basis; the charges are totalled and invoiced according to the pricing model.
- 9.5 Additional services and any expenses shall be invoiced on a flat-rate basis or at cost, at the current rates.

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- 9.6 DeepCloud is entitled to change its prices and hourly rates for valid reasons (such as increases in the costs of licences, of technical delivery of the SaaS Solution, or distribution, support or personnel costs).
- 9.7 Using additional services from Third-Party Providers may give rise to additional fees, which may either be billed directly by the Third-Party Providers or else DeepCloud will handle collection on their behalf without becoming a contracting party to the agreement underlying the claim. The Owner can pay DeepCloud with the effect of discharging the debt. In the collection process, any incomplete payments by the Owner shall first be used to settle DeepCloud’s receivables; the remaining fees collected shall be paid out to the Third-Party Provider. If the Owner considers that the third-party fees billed were not properly invoiced, the Owner must settle its claim directly with the Third-Party Provider.
- 9.8 A valid credit card may be recorded as a mean of payment for fee-based use. An independent payment service provider shall ensure payment processing when the invoiced amount is debited. The provisions on the invoice shall apply. Alternatives to this payment method exist (such as payment on account).
- 9.9 As a rule, the payment for the previous month is debited after the end of the current month. The Owner hereby expressly authorises DeepCloud and the company responsible for the payment processing to collect DeepCloud’s claims due arising from this contractual relationship or for a Third-Party Provider using the stored payment card.
- 9.10 One invoice shall be issued per DeepCloud account for fee-based use. Additional services from Third-Party Providers may be itemised in the invoice.
- 9.11 The invoice is usually issued periodically directly to the Owner. The amount shall be payable strictly net plus statutory value added tax in the specified currency within 30 days from the invoice date.
- 9.12 Any objections to an invoice shall be raised in writing and justified within 30 days after the invoicing date. In the absence of a timely objection, the invoice and services provided shall be deemed to be contractually compliant and accepted.
- 9.13 Default occurs after the due date without further reminder. If the Owner defaults on payment, DeepCloud is entitled, after giving prior notice, to restrict the use of the SaaS Solution or individual DeepServices without setting a further grace period, to block access pending payment or to terminate the contractual relationship.
- 9.14 In the event of restricted use or blocked access, the Owner shall remain liable to pay the fees when due.
- 9.15 In case of default, DeepCloud may demand expense reimbursement (e.g., for processing, reminder fees, enforcement measures) as well as other damages for delay.
- 9.16 In the event of late payment, third parties may be commissioned at any time to collect the receivables or receivables may be assigned to such third parties, with the costs assumed by the Owner.
- 9.17 If DeepCloud is required to perform services prior to payment, it may obtain a credit report on the Owner from a credit reference agency, and information about the Owner’s payment history may be disclosed to that agency in order to safeguard DeepCloud’s legitimate interests.

### **10. Backups and data protection**

- 10.1 DeepCloud shall make regular backups of the content stored in the SaaS Solution, in accordance with the usual backup procedures and established industry standards, to ensure that the content can be restored. The Owner shall be responsible for the backup, retention and archiving of its data. The Owner alone shall determine how long its content shall be retained or stored in the SaaS Solution. The Owner may back up its content stored in the SaaS Solution in a standard machine-readable format at any time and prior to deletion of the DeepCloud account. The Owner itself shall ensure regular backups by means of data export.
- 10.2 Any content deleted or lost by DeepCloud can only be restored from existing backups. DeepCloud may charge the Owner for any data recovery or additional backups it carries out by order of the Owner

### **11. Availability**

- 11.1 DeepCloud shall endeavour to achieve high availability of the SaaS Solution and apply the customary standard of care in business to that end. The availability rate of the SaaS Solution hosting shall be at least 99.5% per year.
- 11.2 Such availability does not include possible downtime due to maintenance, updates/upgrades or repair measures, limitations of third-party systems (such as networks, mobile and internet services, capacity limits), data protection, backup or recovery measures, official administrative or judicial orders, epidemics, pandemics or cases of force majeure, defective performance on the part of suppliers or (hosting) partners, or impairments attributable to the Owner or the Owner’s Users.
- 11.3 In such cases, DeepCloud may limit or interrupt access to the SaaS Solution and to the additional services from Third-Party Providers.
- 11.4 Any interruptions shall be remedied as quickly as possible and DeepCloud shall, as far as possible, give reasonable advance notice (see [status.deepcloud.swiss](https://status.deepcloud.swiss)) and schedule the interruptions at suitable times.

### **12. Malfunctions, support, customer service**

- 12.1 The Owner shall check the SaaS Solution for any malfunctions and for fitness for the Owner’s purposes before putting it into operation. Upon receiving the Owner’s report, DeepCloud shall categorise the verifiable malfunctions according to the severity of the disruption and resolve them. The response time in case of a malfunction shall be based on its degree of severity.
- 12.2 The response time is the period of time between the reporting of a malfunction to Support and the processing of the case (start of the analysis). The duration of the relevant troubleshooting cannot be defined in exact time units since it varies greatly from case to case and depends on the malfunction in question. The higher the priority, the sooner the troubleshooting must be carried out.
- 12.3 Depending on the priority, appropriate measures will be taken to recover trouble-free use as soon as possible. Troubleshooting is performed by rectifying the SaaS Solution or by providing a workaround solution. If the cause of the malfunction is not attributable to DeepCloud, the Owner or, if the cause is known, the corresponding Third-Party Provider is informed so that appropriate measures can be taken.
- 12.4 In case of unauthorised adjustments or improper use by the Owner, the troubleshooting shall be at the discretion of DeepCloud.

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- 12.5 Support shall be provided online and by e-mail exclusively during support hours (Mon-Fri 8 a.m. to 12 noon, 1 p.m. to 5 p.m., except on official holidays of Switzerland and the Canton of St. Gallen).
- 12.6 DeepCloud reserves the right to charge for its customer service activities (such as explanations, functional descriptions, responding to queries about operation and use, analysis of presumed malfunctions, training, advice, system configuration, and other services) at its current hourly rates. The same is true of any services involved in an incident report that does not involve any faults committed by DeepCloud.

### **13. Misuse, Breach of Contract, Force Majeure**

- 13.1 DeepCloud shall take appropriate measures to protect itself from use of the SaaS Solution in violation of the contract or of the law. In case of a well-founded suspicion or breach of existing obligations, the storage of illegal content or other misuse by the Owner or the Owner's Users, DeepCloud may limit or block access to the SaaS Solution, delete the relevant content, and terminate the contractual relationship. Further rights and claims of DeepCloud are reserved.
- 13.2 Blocking access alone does not constitute any termination of the contractual relationship. DeepCloud can grant the Owner access to the Applications again if the Owner has ceased the non-contractual or illegal use.
- 13.3 In cases of force majeure or similar events that prevent or substantially impair performance of the services, DeepCloud shall be entitled to suspend its services for the duration of the events and their consequences and to extend that period by a reasonable time before resuming the services. In that case, DeepCloud shall be released from its performance obligations and from any claims for damages. If the event persists for more than 30 days, the contractual relationship may be terminated.

### **14. Warranty and Liability**

- 14.1 The SaaS Solution together with all DeepServices will be of customary quality for a corresponding SaaS solution and provided "as is". Despite all efforts and the use of state-of-the-art technology and security standards, however, it cannot be guaranteed that the SaaS Solution will be absolutely secure or error-free, or that it will be available without any interruptions or malfunctions. DeepCloud will provide the services to the Owner under these GTCs faithfully and carefully. All further guarantees are hereby excluded to the extent permitted by law.
- 14.2 Services performed free of charge are provided without any warranty or rights to claim performance. DeepCloud may discontinue free services with reasonable advance notice or offer them only against payment.
- 14.3 No guarantees or warranties are given that the SaaS Solution will meet the individual needs of the Owner or of the Owner's Users, regardless of whether DeepCloud has been informed of such needs. No information provided on DeepCloud's websites or other promotional statements by DeepCloud constitute quality specifications or warranties regarding the SaaS Solution.
- 14.4 When DeepInfos, the DeepValidator or DeepServices with AI are used, DeepCloud gives no guarantee as to the completeness, accuracy, suitability, timeliness or error-free nature of the Outputs or information, and excludes any warranty and liability – including for infringements of rights caused by Inputs and Outputs – to the extent permitted by law; it also excludes any guarantee that the DeepServices and information will be available to every country desired by the Owner. If necessary, further information should be obtained from other sources (such as the commercial register, official validator, public pronouncements of judgments, legal commentaries) or a legal advisor may be consulted.
- 14.5 DeepCloud's liability is limited to damage caused wilfully or through gross negligence, as well as injury to life and limb. In all other respects, any further liability is expressly excluded, particularly liability for consequential damages, financial loss, and indirect damages (such as additional expenses, lost profit, third-party claims, etc.) and for vicarious agents (including any subcontractors involved). The same exclusion also applies to any no-fault liability.
- 14.6 DeepCloud shall not be liable for loss or destruction of data attributable to DeepCloud unless the Owner has ensured through the required data backups that the content can be restored at reasonable expense. The liability is limited to such restore costs as arise in the case of regular backups.
- 14.7 If DeepServices are used, DeepCloud shall not be liable for the proper functioning of third-party systems (such as the trust service provided by a Trust Service Provider in the case of DeepSign) or of the hardware and software used by the Owner or the Signatory. Moreover, DeepCloud shall not be liable for damage arising from improper selection of a Signature, of a Seal or of the Signatories invited.
- 14.8 If a Signatory is informed of a transaction limit for legal transactions involving monetary payments and such limit is apparent, for example, from the information provided by the Signatory, DeepCloud shall not be liable for any loss or damage resulting from a breach of that limit.
- 14.9 Any claims shall be asserted within six months after performance of the services in order to prevent difficulties concerning proof of evidence and due to the fact that malfunctions may be detected promptly. Any claims against Third-Party Providers shall be asserted exclusively against such Third-Party Providers.
- 14.10 The disclaimers and limitations of liability shall apply to both contractual and extra-contractual claims as well as to the personal liability of DeepCloud's employees, representatives and directors and officers. The foregoing is without prejudice to mandatory statutory liability provisions.

### **15. Data Protection and Confidentiality**

- 15.1 The Parties undertake to comply with the relevant data protection provisions.
- 15.2 Insofar as DeepCloud acts as a "Data Processor", as defined by data protection law, in connection with providing the SaaS Solution, and the Owner is the "Data Controller", the Owner, by accepting these Terms and Conditions, likewise accepts the Data Processing Agreement (DPA) together with the annex ([List of "Further Data Processors"](#)) as amended from time to time.
- 15.3 DeepCloud may call upon qualified third parties (vicarious agents, including subcontractors) to perform its obligations, which the Owner hereby approves. DeepCloud shall select and commission such third parties carefully.
- 15.4 With some DeepServices, information may be exchanged with or between the Owner's systems and/or those of a Third-Party Provider or content (personal and transaction data) may be synchronised with such systems. In doing so, the Owner shall expressly allow the parties involved the necessary access, exchange between the respective systems and processing of the content.

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- 15.5 In such an exchange, the relevant Third-Party Provider or responsible (Abacus) partner may be identified and recorded, and information about the use of the SaaS Solution with the third-party software (as in a support case) may be exchanged with them. The Owner hereby expressly consents thereto.
- 15.6 DeepCloud is entitled to anonymise information from a support ticket and to use the general insights generated from it for its own purposes (such as troubleshooting and improving the SaaS Solution and support services, quality assurance, new product development, statistical analysis, AI training, and other similar purposes). The Owner’s content in the SaaS Solution shall not be affected by such anonymisation.
- 15.7 DeepCloud’s current online privacy policy describes how it processes data apart from that.
- 15.8 The Parties’ official, professional, and banking secrets, as well as their business and trade secrets, shall be kept strictly confidential, whether designated as confidential or recognisable as such under the circumstances. Such content shall also include all information that the Owner transfers to DeepCloud pursuant to the contractual relationship, that is procured by DeepCloud for the Owner, or that is generated in the course of using the DeepServices. The Parties shall not use such information for their own purposes, disclose it to unauthorized third parties in whole or in part, provide it, or otherwise make it available. The information shall be treated as confidential as long as required by the applicable law (even after termination of the contractual relationship) and shall be used only to the extent necessary to maintain or provide the services. The provisions of the Data Processing Agreement entered into between the Owner and DeepCloud shall also apply to such information *mutatis mutandis*.

### **16. Customer satisfaction, promotional information**

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- 16.1 DeepCloud may make inquiries (electronically, by post, or by telephone) as to whether its services can be used in a satisfactory manner and send out (contractual) information about the use of the SaaS Solution (such as servicing, new features, possibilities of use) and about its own similar services or services used in addition, including those from Third-Party Providers.
- 16.2 DeepCloud may forward the Owner’s contact information to Abacus Group companies (see [www.abacus.ch](http://www.abacus.ch)) in Switzerland and the EU and partner companies for advertising purposes.
- 16.3 The Owner may express an objection to promotional information at any time or revoke any consent granted by using the contact information in the website’s legal notice or clicking on the unsubscribe link in a newsletter.

### **17. Duration and Termination**

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- 17.1 The contractual relationship shall enter into effect upon acceptance of these GTCs when registering with the DeepCloud account, at the latest upon using a DeepService. This Agreement is entered into for an indefinite period.
- 17.2 The Owner may terminate use of the SaaS Solution, without prejudice to individual arrangements, by closing its DeepCloud account at end of any month by clicking on the corresponding button, which will launch the termination process. Individual DeepServices may be terminated through deactivation or by closing the transaction. Content shall be deleted by no later than the end of the existing backup periods.
- 17.3 Subscriptions shall be automatically renewed unless cancelled or deactivated in a timely manner.
- 17.4 DeepCloud may terminate the contractual relationship on 3 months’ notice to the end of a month, without stating any reasons and without having to pay any compensation. Services that depend on or are performed by third parties can be terminated by DeepCloud at any time for valid reasons.
- 17.5 DeepCloud may terminate the contractual relationship with the Owner as well as individual DeepServices if they remain unused by the Owner for more than 180 days. Advance warnings shall be given that the DeepService will be terminated unless actively used within a prescribed period that will be communicated.
- 17.6 In case of termination in the course of a month, the entire monthly fee is payable. The termination of the contractual relationship shall not entitle the Owner to any refund of fees already paid (exception: early termination by DeepCloud in the case of the annual package). All receivables due shall be paid.
- 17.7 Both Parties reserve the right to terminate the contractual relationship without notice for good cause (such as justified suspicions of misuse of the SaaS Solution, serious violations of statutory or contractual provisions, insolvency, opening of bankruptcy proceedings, or application for a debt moratorium). In the event of bankruptcy or a debt moratorium on the part of DeepCloud, continued access to the Owner’s content shall be ensured by means of a backup to enable the Owner to establish a follow-up solution with another provider.
- 17.8 Upon termination of the contractual relationship, DeepCloud will block access to the SaaS Solution and discontinue technical communications with other systems or services (such as Ninja, Abacus Software), including those of Third-Party Providers. Individually deactivated DeepServices shall be blocked immediately. Pending transactions or services as well as the associated status reports and information will no longer be transported nor executed.
- 17.9 It is the Owner’s responsibility to set up a backup and archiving plan and ensure the migration of its content. The Owner shall back up its content in a timely manner and delete it accordingly or hereby authorises DeepCloud to delete it. Content can no longer be accessed after termination of the contractual relationship, since it is deleted by no later than the end of the existing backup periods. Data that DeepCloud has the right or obligation to retain is excluded from deletion.
- 17.10 Upon termination of the contract, DeepCloud may continue to support the Owner (at the current hourly rates) upon request (e.g. with migration services). The Owner shall give DeepCloud timely notice of any need for support.

### **18. Other Provisions**

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- 18.1 These GTCs shall supersede any previous general terms and conditions for use of the DeepCloud account and DeepServices. Any general terms and conditions or license terms of the Owner are excluded and shall not form part of the contract, even if DeepCloud does not object to them or provides or accepts services unreservedly.

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- 18.2 DeepCloud may change these GTCs and its prices subject to giving reasonable advance notice (at least 4 weeks) of such changes (e.g. within the DeepCloud account or by e-mail). Such changes shall be deemed accepted unless the Owner gives notice of termination of the contractual relationship before the effective date of the new GTCs; in any case, the changes shall be deemed accepted upon use of the SaaS Solution after the effective date of the new GTCs. Any price adjustment shall take effect from the start of a calendar month.
- 18.3 Any existing written contracts between the Owner and DeepCloud or any agreed changes or supplements to these GTCs shall remain valid even in case of a new version of these GTCs.
- 18.4 The Owner shall not transfer any rights from this contractual relationship to third parties. DeepCloud may assign or transfer rights and obligations as well as the contractual relationship to qualified third parties for good cause. The Owner hereby agrees to a possible assignment or transfer of these rights and obligations.
- 18.5 In the event that individual provisions of these GTC prove to be invalid or null and void, this will not render the remaining provisions invalid or null and void. Instead, they shall be replaced by provisions that most closely reflect their economic purpose. The same will apply in the event of a gap or omission.
- 18.6 All legal relationships in connection with these GTCs shall be governed by Swiss law to the exclusion of the conflict-of-law rules and the Vienna Convention on Contracts for the International Sale of Goods, irrespective of whether the Owner is a consumer or an organisation, with the exception, where applicable, of the mandatory provisions of the law of the EU/EEA country in which the Owner, if a consumer, has his or her customary residence. Without prejudice to other mandatory jurisdictions, the courts of the City of St. Gallen shall have exclusive jurisdiction over all disputes arising out of or in connection with these GTCs.
- 18.7 All references to persons are to be understood as gender-neutral. These GTC are available in a printable format. They are available in various languages. In case of discrepancies or contradictions, the German version shall prevail.